

VOL.

87

EVIDENCE GATHERED FOR THE
REPORT
of
THE ROYAL COMMISSION
APPOINTED TO INQUIRE INTO
THE FAILURE
of
ATLANTIC ACCEPTANCE CORPORATION
LIMITED

EXAMINATION OF JACK TRAMIEL (CONT.)

Date of interview: December 6, 1966

EXAMINATION OF MANFRED KAPP

Date of interview: December 8, 1966 -

Exhibit Number: Vol. 87

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DATE December 6, 1966.

PAGES 11791 - 11951



VOL.

87

THE ROYAL COMMISSION
ON
ATLANTIC ACCEPTANCE
CORPORATION LIMITED

DATE December 6, 1966.
PAGES 11791 - 11951

SUPREME COURT REPORTERS
145 YONGE STREET
TORONTO

THE ROYAL COMMISSION
ON
ATLANTIC ACCEPTANCE CORPORATION LIMITED

1

VOLUME 87

2

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TRAMIEL, Jack
(Resumed) Examination by
Mr. Shepherd
Continued 11791

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Ex.	Page	
3639.	11909	Photocopy of share certificate No. C7057 for 75,000 shares of Atlantic Acceptance with assignment attached

16

17

18

19

20

21

3640 11939 Cheque dated Februar- 17, 1961, drawn on the Royal Bank of Canada, payable to Commodore Portable Typewriter Limited, in the amount of \$24,992.50, drawn by Netherlands Overseas Corporation.

22

23

3641 11940 Impression of stamp of Commodore Portable Typewriter Company Limited.

24

25

26

27

28

29

30

THE ROYAL COMMISSION
ON
ATLANTIC ACCEPTANCE CORPORATION LIMITED

A/FTP/1

11791

1

2 TUESDAY, DECEMBER 6, 1966

3

4 ---On resuming at 10.12 a.m.

5

6 JACK TRAMIEL, resumed the stand.

7

8 EXAMINATION BY MR. SHEPHERD (Cont'd):

9 Q. Mr. Tramiel, evidence was given
10 before the Commission generally to the effect --
11 and I can show you the documents if you should
12 require them -- that at the beginning of 1964
13 Commodore Sales Acceptance and Commodore Factors
14 dropped its interest rate from 12 per cent to
15 8 1/2 per cent in respect of loans theretofore
16 made to Commodore Business Machines (Canada)
17 Limited and its subsidiaries, and instead loaned
18 to Trans Commercial Acceptance; and the evidence
19 was that Trans Commercial Acceptance thereafter
20 loaned the same moneys which it had received from
21 Commodore Sales Acceptance and Commodore Factors,
22 to the Commodore Business Machine companies and
23 to other companies such as Analogue at 12 per cent,
24 the apparent effect of the transaction being to
25 return a profit to Trans Commercial Acceptance
26 which was then, or at all events during the course
27 of that year became, owned by Associated Canadian
28 Holdings. Are you sufficiently familiar with
29 the transaction to be able to assist the Commission
30 on it without our going through the documents
themselves, which I would be glad to do if you

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J. Tramiel

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2 require them?

3 A. I am quite familiar with it.

4 Q. Could you give us the explanation
5 of why that arrangement was entered into?

6 A. If I understood, Mr. Shepherd, you
7 said the interest was dropped for Commodore to
8 8 1/2 per cent?

9 Q. What I at least intended to say was
10 Commodore Sales Acceptance and Commodore Factors
11 had in the recent past just prior to January, 1964,
12 been lending moneys to Commodore Business Machines
13 and these other companies at a rate of 12 per cent?

14 A. Yes, sir.

15 Q. With effect from 1st January, 1964,
16 as I recall the evidence, Commodore Sales
17 Acceptance and Commodore Factors loaned to Trans
18 Commercial Acceptance at a rate of 8 1/2 per cent,
19 and Trans Commercial Acceptance lent the money to
20 these borrowing companies still at 12 per cent.
21 Does that agree with your recollection of what
22 occurred?

23 A . Yes. You see, Commodore Sales
24 Acceptance had never reduced their rate to
25 Commodore Business Machines to 8 1/2 per cent,
26 that is the first answer.

27 Q. Yes?

28 A. I had a number of discussions with

29 Mr. Morgan, and I complained about the high interest

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1

2 Machines (Canada) Limited and its subsidiaries.

3 Q. In making that complaint, I take
4 it you were acting on behalf of Commodore Business
5 Machines?

6 A. Yes, sir. A number of times.

7 This was before the exact date when Trans
8 Commercial was formed and Baronet was formed.

9 Q. Yes?

10 A. Mr. Morgan at one time (I am not
11 sure of the exact date) said that he would like
12 to take a closer look at the financial costs of
13 the loans, and he opened up those two finance
14 companies called Trans Commercial and Baronet
15 Associates. By this way he will have a tighter
16 control and he will see it much closer exactly
17 what the cost and how big the loans are to these
18 companies; and at the end of the year, whatever
19 the year end was for Trans Commercial or Baronet
20 Associates, he will adjust the rates according
21 to the amount of work or the amount of cost that
22 it cost them to operate those loans.

23 There was never a reduction to Commodore
24 Sales -- to Commodore Business Machines (Canada)
25 Limited at that time, but my understanding was
26 that at the year-end there will be some adjustment.

27 Q. You said that the substitution of
28 Trans Commercial Acceptance as the borrower for
29 the Commodore Business Machine companies was
30 intended to have the effect of giving greater

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J. Tramiel

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1 2 control -- was that the expression you used?

3 A. Yes, this is the understanding that
4 Mr. Morgan gave me. What he had in the back of
5 his mind I don't know, sir.

6 Q. In what sense did it give greater
7 control to any ---

8 A. My only understanding that I can
9 guess is that Commodore Sales Acceptance had other
10 customers than Commodore Business Machines
11 (Canada) Limited.

12 Q. Yes?

13 A. And by having a company which only
14 lends money to those subsidiaries, would give him
15 a much easier way of checking on the loans or
16 seeing what is going on, than going over the
17 whole Commodore Sales Acceptance bookkeeping.
18 This is only my feeling, but what was in Mr.
19 Morgan's mind I don't know. Maybe he wanted to
20 use it for something else.

21 Q. Formerly he would simply record
22 or his servants would, on the books of Commodore
23 Sales and Commodore Factors, a number of loans to
24 different borrowers; and after this arrangement
25 was entered into, he would record the same loans
26 but in the aggregate to one borrower. That was
27 the only difference, was it not?

28 A. Mr. Shepherd, I can only see from
29 to-day, as I see it to-day, not as I have seen it
30 then, as maybe by having in the books another
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1

2 finance company and he could have rediscounted
3 the loans, it looked better for his books.

4

5 Q. But is it not manifest to you, Mr.
6 Tramiel, that the sole practical effect of this
7 was to give to Trans Commercial Acceptance a
8 3 1/2 per cent spread on the interest rate,
9 without any benefit to Commodore Business
Machines?

10

11 A. Yes, but, Mr. Shepherd, Mr. Morgan,
12 Commodore Sales Acceptance, had complete control
13 over those two accounts. Commodore Business
14 Machines has deposited the moneys that they have
15 received from their customers directly in
16 Commodore Factors' bank account, not to Baronet
17 Associates, but directly to Commodore Factors.

18

19 Q. Yes?
20 A. And it was just like, as far as
Commodore was concerned, they were still dealing
with Baronet ---

21

22 Q. Associates?
A. Commodore Factors I meant.

23

24 Q. Yes?
A. By this way they knew at all times
what the charges were. There was no loan made
or money borrowed without the total approval from
Mr. Morgan or from Mr. Woolfrey, there was no
money paid out in any way; so the control was
the same way as it was before.

29

30 Q. I agree with what you say, Mr.
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ON
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J. Tramiel

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1

2 Tramiel, but does that not show only that
3 Trans Commercial Acceptance was discharging no
4 function whatsoever? You have said Commodore
5 Sales and Commodore Factors continued to send
6 moneys to the ultimate borrowing companies and
7 charged 8 1/2 per cent to Trans Commercial
8 Acceptance, which in turn charged 12 per cent
9 to Commodore Business Machines?

10 A. Mr. Shepherd, the only answer I can
11 give you is by guessing why it was done to-day,
12 is that Mr. Morgan maybe wanted to have on his
13 books another finance company and show it as a
14 rediscounting business, than a direct loan
15 business.

16 Q. Surely what it wanted to have on the
17 books was a profit on the books of Trans
18 Commercial Acceptance, isn't that correct?

19 A. As far as the profit was concerned,
20 as far as it was told to me is that by the end
21 of the Commodore year-end, Commodore would get
22 an adjustment for its loan in case the expenses
23 are not as high as Mr. Morgan thought. This
24 was explained to me. Now, I didn't feel I had
25 to get the discount immediately. As long as I
26 get the word from Mr. Morgan that he will do that,
27 this was sufficient for me at that time.

28 Q. Do you say that as president of
29 Commodore Business Machines, you considered that
30 although for a reason which you did not understand
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1

2 stand (because Mr. Morgan did not make it plain)
3 although the Atlantic companies were lending at
4 8 1/2 per cent to Trans Commercial, and although
5 Trans Commercial was lending at 12 per cent to
6 Commodore Business Machines, you considered that
7 at the end of the year Trans Commercial Acceptance
8 would repay or restore to Commodore Business
9 Machines either the whole difference in interest
10 rate or at least some part of it?

11 A. I can repeat only what I have said,
12 that an amount -- how much it would have been I
13 don't know. Like I said, maybe part of it, maybe
14 the whole amount, whatever Mr. Morgan would give
15 us as an adjustment, and if he would have felt
16 that the expenses are still too high I don't know
17 if he would give us anything.

18 Q. Then as at 1st July, 1964, you recall
19 Trans Commercial Acceptance stopped being the
20 intermediary in these loans, and Baronet Associates
21 became the borrower from Commodore Sales and
22 Commodore Factors, and continued the same practice,
23 borrowing at 8 1/2 per cent and lending at 12
24 per cent. Is that your recollection? Trans-
25 Commercial Acceptance started it; then Baronet
26 took over, as it were, from Trans Commercial
27 Acceptance?

28 A. As far as I knew, they were two
29 companies, one for the United States and one was
30 for Canada; just like Commodore Sales Acceptance
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1

2 and Commodore Factors; this was Baronet Associates
3 which worked together with Commodore Factors, and
4 Trans Commercial which worked together with
5 Commodore Sales Acceptance.

6 The exact dates I couldn't answer you
7 without seeing the facts.

8 Q. Do you say that you believed, as
9 president of Commodore Business Machines, that
10 Baronet would make some kind of an adjustment at
11 the end of the year?

12 A. No, Mr. Morgan would make some
13 adjustment.

14 Q. But you were the president of the
15 company that was paying the 12 per cent. Did you
16 believe some adjustment was going to be made?

17 A. At that particular time I wanted to
18 believe that it would be made, but I had no control
19 over it and I couldn't go to anybody else to get
20 the money anyway.

21 Q. Did you believe that there would
22 be an adjustment or did you not believe?

23 A. I believed that there would be an
24 adjustment.

25 Q. Because Mr. Morgan indicated to you
26 that there would be?

27 A. Yes, sir.

28 Q. Then why was no adjustment made?

29 A. For the simple reason because before
30 Commodore's year end Atlantic went broke.
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1

2 Q. I show you Exhibit 298, an audited
3 financial statement of Trans Commercial
4 Acceptance Limited as at 31 December, 1964.
5 I call to your attention the statement of
6 operations on page 2, showing interest earned
7 by Trans Commercial Acceptance, \$118,000 (I am
8 omitting the hundreds); interest paid, \$82,000.
9 Have I read those figures correctly?

10

A . Yes, sir.

11

Q. If there was an arrangement whereby
Trans Commercial Acceptance was to restore some
part of that money to Commodore Business Machines,
why is it not reflected in the financial statement?

15

A . Mr. Shepherd, I mentioned to you
before that this adjustment was not up to me.
My understanding was it will be done at Commodore's
year end, and Commodore's year end was June 30th,
1965.

20

Q . Well, we have a year-end that I
wanted to discuss with you before that, 30th
June, 1964.

23

HIS LORDSHIP: 351, Mr. Shepherd?

24

MR. SHEPHERD: I was just looking for it,
Mr. Commissioner. It is 356, sir.

26

Q . Exhibit 356 is Commodore Business
Machines (Canada) statement and I direct your
attention to the fact that there is no note or other
observation on the statement indicating that the
auditors for Commodore Business Machines thought
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J. Tramiel

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2 that that company was entitled to recover any
3 part of this interest. What is the explanation
4 for that?

5 A. The explanation is I would only tell
6 the auditors when the cheque is going to be in the
7 company. Just because a man told me he might
8 give me in case money is going to be there, I do
9 not think I was entitled to tell the auditors
10 just that it might be.

11 Q. Trans Commercial Acceptance, Mr.
12 Tramiel, was owned at the relevant time, I put
13 it to you, by Associated Canadian Holdings, in
14 which you and Mr. Kapp and Mr. Morgan had an
15 interest?

16 A. Yes, sir.

17 Q. Did you inform the directors of
18 Commodore Business Machines that the company
19 supplying its funds was in fact lending that money
20 at 8 1/2 per cent to a company in which you and
21 Mr. Morgan (the chairman of the Board) and Mr.
22 Kapp had an interest, but that the borrowing
23 company was still charging 12 per cent to
24 Commodore Business Machines?

25 A. I do not recall telling the Board
26 directly, and I do not recall exactly when Trans
27 Commercial owned Associated Canadian Holdings,
28 when Associated Canadian Holdings bought Trans
29 Commercial, not running the company.

30 Q. I put it to you, Mr. Tramiel, that
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there was one exception to this rule of Trans
Commercial Acceptance or Baronet Associates
getting 12 per cent and not passing on the savings
to the borrowing company. That exception was
made for A.C.E. Business Equipment Limited or
Incorporated, which company borrowed its money
at 8 1/2 per cent instead of 12 per cent. Why
was that company an exception?

A. I couldn't answer you, sir.

Q. You see, the problem we face is
that the publicly-owned companies do not get the
benefit of the decline in interest, but A.C.E.
Business Equipment does get it?

A. Mr. Shepherd, I would like to make it clear, when you say "publicly held companies", yesterday I have testified and I gave you information that A.C.E. has sold its assets to Commodore Business Machines without one cent of profit to the public company. The way you are putting it at the present time, that somebody was making a profit again.

Q. Did A.C.E. go out of business when it sold to Commodore Business Machines?

A. Yes, sir. I believe it did.

Q. That could not be the relevant time, because A.C.E. Business Equipment is borrowing money from Baronet and possibly from Trans Commercial Acceptance. I suggest this

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1

2 Equipment was in business. 31 July, 1964, is one
3 date when A.C.E. Business Machines Incorporated
4 owes money to Baronet Associates Incorporated, to
5 which it is paying 8 1/2 per cent?

6 A. Well, when you say money, how much
7 money?

8 Q. Well, I will be glad to look up
9 the schedule for you, Mr. Tramiel.

10 THE COMMISSIONER: It would not make any
11 difference in principle, whether the amount was
12 large or small?

13 A. Mr. Commissioner, the reason I am
14 asking that question to see the figure, is because
15 I know that A.C.E. did not borrow any other money
16 than to produce or to assemble adding machines in
17 Ireland, and when Commodore bought those assets
18 they have paid the exact expenses and the total
19 from
loan, they took over the loan / A.C.E. There was
20 no profit made in A.C.E. in any way.

21 Q. I do not think that is really what we
22 are talking about, Mr. Tramiel, although it is
23 comforting to hear that.

24 MR. SHEPHERD: Q. Just while that exhibit
25 is being sought, Mr. Tramiel, what I am getting at
26 is that Commodore Business Machines, Commodore
27 Dry-Copy, Commodore Business Machines Incorporated,
28 continued to pay 12 per cent. A.C.E. Business
29 Equipment pays 8 1/2 per cent. Why?

30 A. I have no idea. I know that it was a
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J. Tramiel

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2 loan that we possibly had with Commodore Sales
3 Acceptance or one of the companies that we were
4 receiving 8 1/2. I am not sure, sir.

Q. We will pass on, and when the exhibit
is available perhaps I can return to it. Apart
from this exhibit which you wish to see, is there
anything else which you can say which would assist
the Commission as to why the loans are made by
Commodore Sales at 8 1/2 per cent, and the money
costs the Commodore Business Machines companies
12 per cent?

18 Q. But the whole of my questioning,
19 Mr. Tramiel, has been directed to the fact that
20 that is exactly what did not happen. He gave a
21 reduction in interest rate to a company in each
22 case the shares of which, some of the shares of
23 which were registered in your name, and that
24 reduction did not accrue to the benefit of
25 Commodore Business Machines. Can you assist us
26 any further on the matter?

27 A. Mr. Shepherd, the only answer I can
28 give you is that the Commodore directors, which
29 were also directors of Atlantic Acceptance --

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ON
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J. Tramiel

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A/3

were not small loans as far as I was concerned --
they knew exactly what was going on. I did not
have a personal interest in the companies, and
if there was any reductions it was strictly in Mr.
Morgan's hands and there was absolutely nothing
hidden from it.

Q. When you say you did not have a personal interest in the companies, Mr. Tramiel, is it correct that you are again asserting the position that although the shares of Baronet Associates Incorporated were upon its incorporation registered in the name of yourself and Mr. Kapp, and there was no trust agreement in existence giving Mr. Morgan any interest therein, that it is your contention that he did really own the shares of Baronet Associates?

18 A. Yes, sir.

(Page 11805 follows)

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ON
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J. Tramiel

11805

B/1/WC

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Q. Now, apart from showing you any exhibits which you wish to see, and I regret to say I have called for the wrong one, is there anything else you can assist us on in respect to that matter?

A. Only like I say again, Commodore Business Machines has repaid these loans to Baronet and Trans Commercial in December, 1964. And if I would have any interest, I say again, I would pay -- I would find a way I would not pay it.

Q. Mr. Tramiel, surely it is quite clear that these loans were shifted in December, 1964, and later, from the Commodore companies to Jay-Man, a company without assets; is that not correct?

A. I am saying there was \$2 million worth of loans repaid in December, 1964, to Baronet and to Trans Commercial, which went back to Commodore Sales Acceptance and Commodore Factors. All the loans from Commodore Business Machines were repaid. Not the Jay-Man loans, I am talking about Commodore Business Machines (Canada) Limited and its subsidiaries.

Q. Are you referring to the transaction whereby Commodore Business Machines sold \$1 million worth of notes and \$1 million par

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J. Tramiel

11806

1
2 value of preference shares at a discount to
3 Hugo Oppenheim und Sohn Berlin, which bank then
4 sold the shares at par, thereby making a profit,
5 to Trans Commercial Acceptance; which company
6 Trans Commercial Acceptance financed the purchase
7 by borrowing moneys from British Mortgage and
8 Trust as to \$1½ million, and financed the
9 remainder from Commodore Sales Acceptance, and
10 then paid the proceeds of this sale of securities
11 to Commodore Sales Acceptance; the effect being
12 to transfer \$1½ million of debt theretofore
13 owing to Commodore Sales Acceptance to British
14 Mortgage and Trust?

15 A. Yes, sir.

16 Q. Anything else you particularly wish
17 to deal with?

18 A. When you say "discount", there
19 was 5 per cent discount.

20 Q. I beg your pardon?

21 A. The discount was 5 per cent.

22 Q. Yes, I am going to deal with
23 the discount when we come to Hugo Oppenheim.
24 Can we leave that point?

25 A. The only difference, Commodore
26 was only paying 6½, 6-3/4 per cent instead of
27 8½.

28 Q. Commodore Business Machines having
29 sold these securities was paying?

THE ROYAL COMMISSION
ON
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J. Tramiel

11807

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2

A. 6-3/4 per cent.

3

Q. The lesser rate of interest than
if they hadn't sold its securities and continued
to borrow the money?

6

A. Yes.

7

Q. Hugo Oppenheim und Sohn Pravatbank
Berlin, which I will call Hugo (Berlin), the
evidence has been that an interest in that
company was acquired at different times between
September and December, 1964, as a result of
which at the end of the calendar year just over
80 per cent of the shares of the Hugo (Berlin)
bank were registered in your name. Starting
there, is that substantially true?

16

17

A. Yes, sir.

18

Q. Will you explain when you first
conceived the idea, if you did, of purchasing
any interest in a bank in Europe?

20

21

A. I believe it was some time the
beginning of the summer of 1964.

22

23

Q. Beginning of which month?

24

A. The beginning of the summer. June,
maybe.

25

26

Q. Of the summer. I am sorry, yes.
Then, what did you do from there on?

27

28

A. I had a discussion with Mr. Morgan,
mentioning to him if we can buy an interest in
a small bank in Berlin maybe we can borrow money

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J. Tramiel

11808

1
2 at the lower interest for our German subsidiary
3 than transferring moneys of Commodore Business
4 Machines (Canada) Limited to Germany.

5 Q. Who did you intend would be the
6 buyer at that time?

7 A. My intention was that Commodore
8 would be.

9 Q. Commodore Business Machines?

10 A. Yes.

11 Q. So, you conceived an idea of having
12 Commodore Business Machines purchase a bank in
13 Germany so that that bank might be able to
14 lend money to Commodore Business Machines
15 subsidiary, Willy Feiler, at a lower rate of
16 interest than Commodore Business Machines had
17 to pay; is that correct?

18 A. Yes, sir.

19 Q. What was Mr. Morgan's reaction to
20 that idea?

21 A. The idea was as long as we can
22 borrow money cheaper somewhere else it would be
23 a very good idea.

24 Q. Are we still speaking of the early
25 summer of 1964, now?

26 A. Yes.

27 Q. What was the next step taken, or
28 the next discussion had?

29 A. Well, this was -- I had a discussion

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ON
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J. Tramiel

11809

1 with our lawyer in Berlin.
2
3

4 Q. Who was that, please?

5 A. Mr. -- Dr. Schultzer.

6 Q. Dr. Schultzer?

7 THE COMMISSIONER: S-c-h-u-l-t-z?
8

9 A. On the end is a "z". I told him
10 of my interest, and after a few weeks he told me
11 that he knows of a bank. He asked me to sign
12 a letter that indicates we buy the bank, we will
13 pay a commission.

B/2

14 MR. SHEPHERD: Q. What bank was this one?

15 A. The name of the bank was Grund Bezic
16 Handelsbank.

17 Q. Will you spell that for the Reporter?

18 A. I will give it to you.

19 THE COMMISSIONER: It is G-r-u-n-d B-e-s ---

20 A. G-r-u-n-d and B-e-z-i-c.

21 MR. SHEPHERD: Handels - H-a-n-d-e-l-s-b-a-n-k,
22 one word?

23 A. One word, yes.

24 Q. What steps did you take to implement
25 this purchase?

26 A. This time I met Mr. Wirth.

27 Q. What was his connection with the
28 matter?

29 A. He was one of the directors -- when
30 I say "director" a director in Germany, a director
 is management, he was the managing director.

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ON
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J. Tramiel

11810

1

2

Q. Of this bank that you were proposing
3 to look at?

4

5

A. Yes.

6

7

Q. Yes?

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A. And after investigating it, which took quite a long time, I believe that I at one of the meetings, I mentioned this to the board of directors of Commodore Business Machines (Canada) Limited. I was told that Commodore should not be in the finance business. I still felt it would be a good idea if we could have a bank and borrow money at a lower rate.

Q. Who among the directors opposed this acquisition, do you recall?

A. Who the name was, I don't know.

Q. Was Mr. Morgan in favour of the idea or opposed to it?

A. Well, Mr. Morgan was usually waiting how the meeting will go, and he was always on the winning side.

Q. In this particular instance, do you recall what his position was? I think you indicated previous to this he had taken the position that the idea had merit?

A. That particular moment he felt it had merit, also that Commodore Business Machines should not be in the finance business.

Q. Nothing was done, I take it, about

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2 that bank?

3 A. Oh, yes, it was.

4 Q. Continue, what was done?

5 A. We continued. At that time I
6 borrowed some money personally from some friends
7 of mine. The total investment, I believe, was
8 something -- I am not sure of the exact investment,
9 but I think it wasn't over a hundred thousand
10 dollars.

11 Q. There was a loan made in or about
12 September, 1964, to you from Trans Commercial
13 Acceptance. Would that be the money to which
14 you refer?

15 A. No. I know I have borrowed some
16 money personally outside of any companies Mr.
17 Morgan had any interest in.

18 Q. Now, you are proceeding, as it were,
19 on your own, you are now dealing personally;
20 is that it?

21 A. When you say personally, if I would
22 have bought it the money still would have been
23 loaned to Commodore Business Machines (Canada)
24 Limited at a rate which was much more satisfactory,
25 a much better rate than they were paying to
26 Commodore Sales Acceptance.

27 Q. But had you bought this particular
28 bank you would have owned ---

29 A. And the people which have loaned me
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money.

THE COMMISSIONER: I do not understand that, Mr. Tramiel. This seems to be a fixed idea in your mind that when somebody loans you money the lender owns whatever is purchased with the money. Surely you are the one who owns it. You may owe some money to the lender but you are the man who owns whatever the asset is that has been purchased.

A. May I say, Mr. Commissioner, when a man -- in this case I am talking about the present time -- is lending me money, the private individual, and he is taking a risk, he is entitled to share in the future profits in the company.

Q. Well, as to that definition of ownership and entitlement to share, please take it from me it is contrary to the law, and, indeed, the facts of any given situation that we have discussed so far.

A. Mr. Commissioner, as far as the private borrowing, like the last part, I have applied for a number of loans in the United States to the Small Business Administration, or --- there is a number of banks in the United States.

Q. Yes, well ---

A. Every time I have asked for the loan, Mr. Commissioner, they have asked for an

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2

3 interest in the business, and a very high
4 interest, too. And they were licensed banks
5 from the United States Government.

6

7 Q. Well, it is a sad case. Do you
mean they have asked to be partners of yours?

8

A. Yes, sir.

9

Q. In your enterprise?

10

A. Yes.

11

12 Q. Not in the form of taking security,
in the form of being part owners?

13

A. Taking the security and part owners.

14

THE COMMISSIONER: Go ahead.

15

16 MR. SHEPHERD: Q. Do you mean, Mr. Tramiel,
in this particular instance, dealing with the
17 first bank named, you borrowed some money and
had you purchased that bank you would have enabled
18 those who loaned you the money to participate
19 in the equity of the bank so that they would
20 have been shareholders and you would have been
21 a shareholder?

22

A. Yes, sir.

23

24 Q. Yes. Now, what happened in
connection with this transaction, then?

25

26 A. When we checked out the bank
completely, we dealt with the man, I think the
27 bank was in a deficit, the figures weren't
28 correct, and everything else. And it got to
29 a point even the money I had deposited with the
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2 bank for the down payment was used up before
3 we came to a closing. And where I had seen
4 that particular dealing I immediately withdrew
5 the money, which takes a week to get back,
6 because the money was used already for something
7 else. We just forgot about it.

8 Q. All right. What was the next step
9 in connection with the German banks?

10 A. The next step is that Mr. Schultzer
11 came up with another bank, and that was the Hugo
12 (Berlin) bank, the way you are saying it.

13 Q. Yes?

14 A. And the idea was at that time, I
15 have repaid the moneys what I have borrowed
16 from those individuals, and I went back to Mr.
17 Morgan again. I have told him there is a
18 bank to be purchased.

19 Q. How much money were you speaking
20 of to be invested in this bank originally?

21 A. \$125,000, sir.

22 Q. And what interest was that going
23 to buy you in the bank?

24 A. I know it was more than 50 per cent,
25 but the exact amount ---

26 Q. I see. So, you spoke to Mr.
27 Morgan. Now, what was this discussion?

28 A. No, I have to correct this, it
29 could not have been more than 50 per cent because

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the total capital was a million and a half marks,
and half a million marks would only be 25 per
cent interest.

Q. It would be a third, wouldn't it?
A half a million marks would be a third of a
million and a half?

A. That would be treasury stock, sir.

Q. Yes. So, you spoke to Mr. Morgan
and what was that discussion?

A. Mr. Morgan still felt the same way,
if I can borrow money for Willy Feiler at a low
rate, would be a good idea.

Q. But if you bought only a 25 per
cent interest it would be correct, would it not,
you would not be able to influence the lending
policies of the bank and you would have no
assurance Willy Feiler could borrow?

A. No, I couldn't influence the
bank even if I had a hundred per cent if the
loan would not be right, if the loan would not
be good.

Q. You mean on the ground that the
professional manager, called Vorstand?
V-o-r-s-t-a-n-d?

A. I believe so.

Q. That he would have the authority
to decide on what loans the bank was to make;
is that correct?

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2

3 A. Yes, sir.

4

5 Q. That being so, how was the investment
6 in the shares of a bank going to help Willy
7 Feiler?

8

9 A. Because Willy Feiler had very good
10 security which they could borrow against from a
11 bank which was willing to lend them the money.

12

13 Q. What I am not clear on, Mr. Tramiel,
14 why Willy Feiler couldn't go to any bank, on
15 your explanation of how these banks operate,
16 and borrow money if it doesn't make any difference
17 whether you own shares in it?

18

19 A. When I say it doesn't make any
20 difference, I say what interest I would have in
21 the bank, whether it would be 25 per cent or
22 100 per cent, the difference doesn't make any
23 difference. Knowing the management of the bank
24 or not knowing the management of the bank.

25

26 Q. You say that if you had an interest
27 whether control or not you might have been able
28 to influence favourably the judgment of the
29 lending officers of the bank so that they would
30 lend to Willy Feiler?

31

32 A. The bank would look more favourably
33 on the Willy Feiler account.

34

35 Q. Had Willy Feiler made any attempts
36 to borrow from banks in Germany?

37

38 A. When Commodore Business Machines
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2
3 bought Willy Feiler, Mr. Feiler didn't -- Willy
4 Feiler was not a company, it was strictly a
5 proprietorship.
6

Q. Yes?

A. He guaranteed the loans personally.
And when we bought it and we made it a limited
B/3 company, the bank has withdrawn the loans.
9

Q. Yes?

A. We had a loan with American Express
11 for one million marks.
12

Q. Yes?

A. They didn't want to go any higher
14 than the one million marks. There was still
15 in German banks -- they didn't have as much ---
16 You see, I was mentioning in the German financial
17 world, on the German bank, and I was looking for
18 more money for Willy Feiler, because this was our
19 manufacturing facility, and we wanted more money
20 there.
21

Q. You took this proposal, I take it,
22 to Mr. Morgan?
23

A. Yes.

Q. You are now speaking of \$125,000
25 investment?
26

A. Yes, sir.

Q. What is Mr. Morgan's reaction to it?
28

A. Yes, let's go into this.
29

Q. And what did you do then?
30

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2 A. He advised me we should get the
3 money there.
4

5 Q. Is this the money you got from
6 Trans Commercial Acceptance?
7

8 A. I believe this is where it was.
9

10 Q. Yes. Then, please describe in
11 your own words the progress of the transaction
12 from here on.
13

14 A. Then I went to -- back to our lawyer.
15 I think he has drawn up the papers of buying this
16 125,000 marks (sic) ---
17

18 Q. This is Dr. Schultzer again?
19

20 A. Yes. It wasn't done immediately,
21 I came back to Canada. And on my trips to
22 Canada I told him of the progress being made.
23 And he mentioned to me, "Well, Jack, why don't we
24 invest a larger sum of money than the half million
25 marks?".
26

27 Q. Did he give you any reason for this
28 suggestion?
29

30 A. The only reason he gave me was when
I explained to him on what basis the German bank
is working on, if they have a higher capital
they can borrow more money. This was explained
to me. He felt by having a bigger investment
in the bank we might be able to borrow more money.
And he was explaining to me of the shortage of
money that Atlantic Acceptance has.

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Q. What is the ratio between the invested capital in the bank and the amount of money that the bank is able to borrow from the public, no doubt in the form of receiving deposits?

A. It was explained to me that they are allowed to borrow twenty times of the capital.

Q. When you say "borrow", would that mean that there is a ratio fixed between the amount of invested capital in the bank and the aggregate amount they are allowed to have on deposit from customers?

A. No, they are allowed to borrow, this is what was told me, from the other banks, from the central bank. It had nothing to do with deposits.

Q. So, it was your understanding, then, for every dollar of equity in the bank the bank would be entitled to borrow \$20 from the central bank or other banks?

A. This was my understanding.

Q. Just in passing, did that prove to be incorrect?

A. I don't think the law is still correct, but it is still up to the central bank and the other banks to lend money against security.

Q. It is true, you still have to find somebody to lend money?

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A. Yes.

4

5

6

Q. All right. What did Mr. Morgan say then, developing the matter on which you have touched?

7

8

9

A. He just mentioned that he would like to invest a greater amount of money, that the bank should be a ten million marks bank.

10

11

12

Q. And how was this going to assist Atlantic to overcome the shortage of money it was experiencing?

13

14

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A. They would be able to borrow money or sell secured notes or notes of Atlantic or something of this nature. Mr. Morgan mentioned he to me, even intends to go to some other European capital and borrowing money. I am not sure if this was the time when there was some restriction from the United States or not.

29

30

Q. Then, so I understand that, Mr. Morgan envisaged that the bank in Germany would be able to borrow money, and that the greater the capital of the bank, the more money it could borrow, and that the bank would then be able to lend the money to Atlantic Acceptance, which would assist that latter company in overcoming its problems of getting money?

29

30

A. Yes, sir. At that time, I say again, I must have been in Germany again. I have advised Mr. Schultzer -- or, Dr. Schultzer --

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again, instead of increasing the capital for
a half a million marks it should be increased
to ten million marks. Here he had worked on
it a half a million mark transaction before.

Q. Yes?

A. I believe we were partners already
with the half-million marks. And then he went
on to increase it to ten million marks.

Q. Did Mr. Morgan indicate to you where
the money would come from to enable you to take
down your proportionate share of the ten million
mark capitalization?

A. No, sir.

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C/TMC/l

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2 Q. Did he say that he would supply the
3 money?

4 A. Yes, sir.

5 Q. What did he say about it?

6 A. Just advised me when the money is
7 required and I will send it down to you. When I
8 was in Germany I called -- I told him -- that Mr.
9 Scholze said, it could be done, and three days
10 later I believe the money arrived by Telex or
11 by telegram.

12 Q. Yes?

13 A. To the bank.

14 Q. Would that be the sum of \$2,075,000?
15 My recollection of the amount.

16 A. To cover this 80 per cent of
17 interest.

18 Q. At all events, it was an amount
19 slightly in excess of \$2,000,000?

20 A. Yes, sir.

21 Q. What was your understanding at that
22 time, as to who was borrowing that money?

23 A. Evermac Office Equipment.

24 Q. How did you come to that under-
25 standing?

26 A. This was told to me when I left.

27 Q. By?

28 A. Mr. Morgan.

29 Q. Do I understand now, that Mr. Morgan
30 said, that the capital of the bank should be
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2 increased to 10,000,000 marks, approximately
3 \$2 1/2 million in our money, that he, Mr. Morgan,
4 would cause the required money to be made
5 available and that the interest in the bank so
6 acquired was to be the property of Evermac
7 Office Equipment Company Limited?

8 A. Yes, sir.

9 Q. Right. What was done? You got the
10 money and then what did you do?

11 A. Then, I am not sure of the procedures
12 that Mr. Scholze went through with the legal
13 procedure, what should be done.

14 Q. I put it to you, Mr. Tramiel, that
15 the shares were in fact issued in your name and
16 not in the name of Evermac Office Equipment. Why
17 was that done?

18 A. I was told at that time that, by
19 one of the -- by Mr. Scholze or one of his people
20 there, and Dr. Scholze took it that it would be
21 easier to do the transaction through an individual
22 name as far as signing and notarizing it and
23 everything else. A man on the spot -- it could
24 be transferred afterwards to the corporation or
25 to any corporation. I have mentioned this to
26 Mr. Morgan when -- before the money was sent and
27 he felt that this was the way to do it that way.

28 Q. Why were the shares then not trans-
29 ferred to Evermac Office Equipment?

30 A. I believe they were.
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2 Q. When did you think they were?

3 A. Well, I never seen the actual shares,
4 because I believe the shares had to be printed
5 and the shares -- that is the only time I received
6 the correspondence from the bank from Hugo
7 Oppenheim (Berlin) offering American Express, was
8 some time in June that the shares were available
9 and ready to be shipped and I even asked then
10 Mr. Morgan, where they should be shipped to and
11 he told me they should be shipped to British
12 Mortgage for deposit.

13 Q. When did you believe for the first
14 time, that these shares were issued in Evermac's
15 name?

16 A. At all times.

17 Q. Did you give . . .

18 A. When you say, "issued in Evermac's
19 name" ---

20 Q. Yes?

21 A. They could have been issued in my
22 name, but I knew that I -- and I do believe -- we
23 have signed something. I have signed some kind
24 of trust agreement, whatever it is.

25 Q. Indeed they were issued in your
26 name, Mr. Tramiel, and remained in your name.
27 Perhaps you misunderstood my question before.
28 I was asking you why the shares were never
29 registered in the name of Evermac if it was
30 intended that Evermac own them?

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2 A. Well, Mr. Shepherd, I don't know if
3 there is such a thing as registered shares in
4 Germany. Personally, I don't believe there was
5 a name on the shares at all. There is no names
6 on shares in Germany. There is -- they are in
7 street names.

8 Q. Whom did the directors of the Hugo
9 (Berlin) Bank believe owned these shares?

10 A. Well, Mr. Morgan has met Mr. Wirth.
11 I had a number of discussions with Mr. Wirth.

12 Q. Yes?

13 A. And I believed that they have
14 known that in some form or some way, Mr. Morgan
15 owns them.

16 Q. Did Mr. Wirth believe up until the
17 time of the collapse of Atlantic that you
18 personally owned these shares?

19 A. I don't think so.

C/2 20 Q. What about Baron Von Rheden, can you
21 state whether or not he believed or had any grounds
22 to believe, that you personally owned these
23 shares?

24 A. I think Mr. -- I think Baron Von
25 Rheden had, because of this Lucayan Beach
26 situation, a little bit closer relation with Mr.
27 Morgan when he was there, and I believe that
28 Mr. Rheden discussed the bank situation with
29 Mr. Morgan.

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2 A. But, like I say, again, if I explain
3 to him exactly what it is, but I know they had
4 discussions who was the owner, and Mr. Morgan
5 made sufficiently sure to tell him, he owns the
6 hotel. He owns everything, and this is what
7 Mr. Rheden explained to me.

8

9 Q. Then, do you say that while Mr.
10 Wirth and Baron Von Rheden may not have known the
11 very name of the person or corporation beneficially
12 owning the 80 per cent interest, they knew that it
 was not you, personally?

13

A. Yes, sir.

14

Q. Is that what you are saying?

15

A. Yes, sir.

16

Q. The loan of \$2,000,000 being as you
17 have said, intended to be made to Evermac Office
18 Equipment, can you state whether you ever signed
19 a promissory note to Aurora on behalf of Evermac
20 for that \$2,000,000?

21

A. I don't recall signing a note, sir.

22

Q. The evidence has been that no one
23 has been able to find the existence of any such
24 note. Can you assist us as to whether it was
25 ever intended that money be paid to Atlantic by
26 anybody?

27

A. I didn't know, even know the money
28 was borrowed from Atlantic.

29

Q. When Mr. Morgan told you that he
30 would cause the funds to be advanced, from what
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2 source did you think those funds were coming?

3 A. I had no idea. Mr. Morgan had a
4 lot of connections as far as money is concerned.

5 Q. Might I take it that the thought that
6 that money might conceivably be coming from
7 Atlantic Acceptance would have crossed your mind?

8 A. If it did or didn't -- like I say,
9 maybe it could.

10 Q. Were you puzzled by the fact that
11 although this money was loaned to Evermac, you,
12 a necessary signing officer of Evermac, were never
13 called upon to sign a promissory note or other
14 evidence of indebtedness?

15 A. Not at all. Because there wasn't
16 the time when Mr. Morgan asked me to -- to sign
17 something -- I didn't sign.

18 Q. Yes?

19 A. And the same way -- if he didn't
20 ask me to sign it, I didn't sign.

21 Q. May I take it then, that you did not
22 think about or concern yourself about the absence
23 of a promissory note in respect of this
24 \$2,000,000?

25 A. I wasn't even in the country, in
26 Toronto.

27 Q. Yes?

28 A. When the money was transferred to
29 Germany, and I didn't even think about it at all
30 as far as signing, because I was strictly a

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2 I don't see any reasons why you shouldn't do it.

3

Q. Yes?

4

5 A. Or why it couldn't be done. This
6 is the time when I have learned about the trans-
action of the Atlantic stock.

7

8

Q. What did you understand the trans-
action was to be?

9

A. Like I said.

10

Q. Who was buying the Atlantic stock?

11

12

13

14

A. I don't know if I found out then
who the name of the company is, but I found out
afterwards that the company was a company called
Cimcony.

15

Q. Yes?

16

17

18

19

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A. And Mr. Weinrott, which would buy
the stock from Hugo Oppenheim (Berlin) and give
him a third -- and 30 per cent or 33 per cent
down payment on the total amount of the stock,
keep the total stock as security and make a
10 cent profit per share.

Q. Yes?

A. And pay 7 per cent interest or

something of this nature.

Q. Did you have the intention at the

time that you completed the purchase of Hugo

Oppenheim of operating Hugo Oppenheim? I refer

to the Berlin company, Hugo (Berlin), as a bank?

A. My intention?

Q. Yes.

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2 A. My intention was that it was a bank.

3 Q. And, was it your wish that it
4 continue and expand its banking functions? That
5 is, receiving deposits and making loans?

6 A. I believe that my intention was like
7 I said, to make sure that something that I
8 recommended to Mr. Morgan -- it would make a
9 profit.

10 Q. Did you intend then that its principal
11 business would consist in dealing in securities of
12 Atlantic Acceptance?

13 A. Not at the beginning, no.

14 Q. When did you change your policy on
15 that?

16 A. I didn't have a policy, Mr. Shepherd,
17 the policy was guided by Mr. Morgan, but it would
18 be up to me personally. I would recommend to
19 the general manager of the bank to lend money on
20 something which is secured. How was it will be,
21 or what kind of business, thereby the most
22 important should be if they lend money, the money
23 should be secured.

24 Q. What did you understand the trans-
25 action with Cimcony Limited to be as far as the
26 bank was concerned?

27 A. That they will buy a certain amount
28 of shares.

29 Q. Who will, please?

30 A. Hugo Oppenheim.
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2 Q. Yes?

3 A. They will sell the shares to
4 Cimcony. They will receive a certain amount
5 of money and they will hold the shares as
6 security and in eighteen months Cimcony will
7 pay the rest and get the shares.

8 C/3 MR. SHEPHERD: Could I have Exhibit 1000.1,
9 and 1000.2, please, and 3397?

10 Q. Perhaps you could assist me on
11 this, Mr. Tramiel. I show you Exhibit 1000.2
12 and Exhibit 3397. Exhibit 1000.2 is an
13 agreement between Hugo (Berlin) and Cimcony
14 Limited, relating to the sale of 81,500 shares
15 of Atlantic Acceptance, and that agreement, you
16 will observe, is set out in German and in English
17 ultimately, you see?

18 A. Yes.

19 Q. And I call to your attention that
20 Exhibit 3397 is a translation of the German
21 portion of the agreement insofar as it relates
22 to paragraph 1. In the agreement signed by
23 Cimcony and Hugo (Berlin), in the English version
24 of that agreement, it states under paragraph 1:

25 "The seller hereby grants unto the
26 "buyer an option to purchase the said
27 "shares, which option shall lapse on
28 "the 23rd day of April, 1966."

29 The German text, however, says -- as we
30 are informed by this translation Exhibit 3397,

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2 "The seller sells these shares to the
3 "buyer as of April 23rd, 1966."

4 So, I direct your attention to the fact
5 that in the document which was signed by the
6 contracting parties, the English version says
7 that the bank is granting to the purchaser an
8 option and the German text of that same agreement,
9 the bank is not granting an option. It is selling
10 the shares.

11 Now, which was the agreement and can you
12 assist us as to why the German text is different
13 from the English text?

14 A. Well, I read the German text and
15 the German text is right. It says "selling".

16 When this thing was signed -- I did not
17 look at it when it was signed.

18 Q. Can you help us as to why the English
19 text refers to the granting of an option only as
20 opposed to selling the shares?

21 A. I don't think there was any specific
22 reason for it. The understanding was that in
23 European -- again -- it is sold. Mr. Weinrott
24 made specifically the point how important it is
25 for him to own those shares.

26 Q. Can you state whether Mr. Weinrott
27 speaks German? Perhaps you don't know?

28 A. I don't think so.

29 Q. You don't think he does?

30 A. No. He didn't speak in German when
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I was present when Mr. Wirth was there.

Q. It would be fair, I suppose, to suppose that Mr. Weinrott would be looking at the English version of the text which grants to him a very valuable right, an option to purchase those shares, but no obligation?

A. What Mr. Weinrott thought, I could not answer you, sir.

Q. Can you help us any more than you have on why the German version of the contract is different from the English version?

A. No, but the only thing Mr. Shepherd, again, by guessing.

Q. Yes?

A. What reason would there be why he would put a down payment down of six hundred and some thousand dollars if he only has an option?

Q. Well, I think that is explicable, Mr. Tramiel. I put to you Exhibit 1000.1 which shows that the form which the transaction took was not a down payment on a block of 120,000, but as you will see here by Exhibit 1000.1, Cimcony Limited purchased outright and absolutely 38,500 shares of Atlantic and paid cash?

A. Yes.

Q. Then by a separate and second agreement, Cimcony either agreed firmly to purchase the remaining 80,000-odd shares, or else, Cimcony received an option to buy them. Depending on

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2 whether you read the German text or the English
3 text?

4 A. The only -- if I might ask a
5 question, Mr. Commissioner?

6 MR. SHEPHERD: Q. Yes?

7 A. If it was an option and if Cimcony
8 has bought the shares, why didn't they keep them?

9 Q. Do you refer now to the 38,000
10 shares, Mr. Tramiel?

11 A. Yes.

12 Q. Yes. I think you will find that
13 is dealt with as well in the contract relating
14 to the 80,000 shares odd, whereby Cimcony Limited
15 is required to pledge with Hugo (Berlin) those
16 38,000 shares as security for the payment of
17 what is referred to as an option fee, as I
18 recall it, of approximately \$9,000 a month,
19 which sum looks as though it is really interest
20 on the purchase price of those shares. I think
21 if you look at the agreement you will find that
22 the deposit of those shares is treated in that
23 manner.

24 May I take it, Mr. Tramiel, that you cannot
25 assist us as to why the German text varies from
26 the English text in that particular agreement?

27 A. I cannot help you as far as the
28 text, but I could help you that my understanding
29 was that it was sold.

30 Q. It was a firm sale?

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2 A. This was my understanding.

3 Q. May I take it then, that it is the
4 German text which reflects your understanding of
5 what the transaction was?

6 A. Yes, sir.

7 Q. Did you, yourself, notice the
8 difference between the English text and the
9 German text?

10 A. No, I didn't see the contract.

11 Q. Yes. Who prepared the contract?
12 Can you say?

13 A. When I was present in the room in
14 Nassau in Cimcony's offices ---

15 Q. Yes?

16 A. --- Mr. Morgan came down with a
17 number of documents, I believe with a letter
18 signed by his lawyer. Was it 'Hesco', the
19 lawyers for Atlantic Acceptance?

20 Q. That would be a letter certifying
21 to the purchasers that the shares of Atlantic
22 Acceptance were validly issued and not subject
23 to recall and the like?

24 A. Yes.

25 Q. Yes?

26 A. This was from the company attorney.

27 Q. But it was that very contract there,
28 the one in German and English. I wonder if you
29 could assist us as to who prepared that?

30 A. And then there was a contract with
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2 Mr. Wirth and Mr. Rheden has bought with him.

3 Q. Yes?

4 A. This could have been the one that
5 they have bought with them.

6 Q. Yes?

7 A. I am not sure -- I did not look
8 at the contract, but I knew that Mr. Morgan
9 had certain ones and Mr. Wirth had certain
C/4 10 contracts.

11 Q. Was Mr. Weinrott present? I take
12 it he was at the closing of this transaction?

13 A. He was. Yes.

14 Q. Yes. Can you assist us as to
15 whether he appeared to read the contract he was
16 signing which involved \$1,600,000-odd?

17 A. He was reading something, yes.

18 Q. I wonder if you could help us as
19 to why, if he appeared to read that contract?

20 A. I am not sure. I did not say "this
21 contract". I knew that he was reading some,
22 some of the letters, but exactly what he was
23 reading, I don't know, sir.

24 Q. Yes. Can you help us at all as to
25 why Mr. Weinrott apparently led you to believe by
26 his actions and his conversation, that he
27 considered that he was purchasing those shares
28 absolutely, but he signed a contract the version
29 of which in the language which he understood,
30 indicated that he was receiving an option?

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2 A. One, I remember for the simple
3 reason, Mr. Shepherd, is that I knew that the
4 interest -- not the interest, the dividends
5 from those shares . . .

6 Q. Yes?

7 A. . . . were payable to Mr. ~~will~~ to
8 Cimcony.

9 Q. Yes?

10 A. Like the owner. If it will be an
11 option, he wouldn't have gotten the dividends.
12 I am just trying to recollect in my mind what
13 basis, but I knew he was getting the dividend
14 payments or whenever the dividend was made from
15 Atlantic.

16 Q. Well, I take it you can't assist us
17 any more than you have on this mystery?

18 A. No, sir.

19 Q. We have already touched upon a
20 part of the transaction which occurred then in
21 December, 1964, after the shares had been taken
22 down by you, acting as you have asserted, on
23 behalf of Evermac, and I would like to deal with
24 one particular aspect of that.

25 Evidence was given that in December, 1964,
26 Five Wheels Limited sold 100,000 shares of
27 Commodore Business Machines (Canada) Limited,
28 to Hugo (Berlin), for \$500,000, and that Hugo
29 (Berlin) then sold those shares to Trans Commercial
30 Acceptance for \$650,000. That Trans Commercial
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2 Acceptance paid out by way of dividend, its surplus
3 to Associated Canadian Holdings and then,
ERRATA VOL.95 4
4 Associated Canadian Holdings sold Trans
5 Commercial Acceptance at a sum approximately
6 equal to the book value of the shares of Trans
7 Commercial Acceptance to Hugo (Berlin). So that
8 Trans Commercial Acceptance became a subsidiary
9 of Hugo (Berlin).

10 Can you assist me as to what this trans-
11 action is all about, particularly the Five Wheels
12 sale of 100,000 Commodore Business Machines shares,
13 and I should tell you that the market price when
14 Five Wheels sold 100,000 shares was in the order
15 of \$6 to \$6.50, when they sold at \$5 a share?

16 A. Well, I can be of help, is that
17 Hugo Oppenheim (Berlin) in December, wanted to do
18 all the business which was done in North America
ERRATA VOL.95 19 through Trans Commercial, being their DAUGHTER.
19 company. That would be the reason of the sale
20 of the Commodore stock from Five Wheels.

22 Q. I am sorry. I don't follow that.
23 Why would Five Wheels sell 100,000 shares at
24 \$5 against a market price of \$6 to \$6.50,
25 because of Hugo (Berlin)?

26 A. I have answered you the second
27 question first.

28 Q. Well then, continue, please?

29 A. Why Five Wheels was selling the
30 shares for \$5, instead of \$6. That part I could
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1 not help you, because this was something which
2 Mr. Morgan, I believe, being chairman of Five
3 Wheels at that time, worked out with Five Wheels.

5 Q. You were a director of Five Wheels
6 at that time, were you not?

7 A. I believe I was.

8 Q. And you were an officer of the
9 purchasing company, Hugo (Berlin). Can you not
10 assist us further as to why they would sell at
11 that price?

12 A. As far as -- no, I could not assist
13 you. I can only guess that Mr. Morgan may have
14 told them, if they wanted to sell them to the
15 market, they would not get this amount of money,
16 but it is only guessing.

17 Q. Then Hugo (Berlin) sells to Trans
18 Commercial Acceptance for \$650,000. Why were you,
19 as an officer of Trans Commercial Acceptance,
20 content to pay \$650,000 for an asset which Five
21 Wheels had just finished selling for \$500,000?

22 A. Because I did not act as an officer
23 with my own authority. I was acting on behalf of
24 Mr. Morgan.

25 Q. In respect of your connection with
26 Trans Commercial Acceptance?

27 A. On all those companies.

28 Q. Yes. Do you say that you acted only
29 on the instructions of Mr. Morgan in respect of
30 Hugo (Berlin) also?

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2 A. Yes.

3 Q. Mr. Morgan was not at any time an
4 officer of the German bank, was he?

5 A. No.

6 Q. Nor was he a director?

7 A. No.

8 Q. Nor, indeed, was he a shareholder?

9 A. I held the shares for him.

10 Q. Yes. Well, you held the shares for
11 Evermac Office Equipment Company Limited, did you
12 not?

13 A. Which in my opinion, he was the
14 owner.

15 Q. Why would you take instructions as
16 chairman of the board of a bank in Germany, as to
17 what that bank is to do, from Mr. C. Powell Morgan?

18 A. Because, as I have said previously,
19 he was the man which have bought the shares, who
20 put up the money and, in my opinion, he had the
21 full authority, but I did not give any instructions
22 to the German bank. We could only approve or
23 disapprove transactions which the management
24 wanted to do. We could only recommend trans-
25 actions to be made, but not exercise them without
26 the approval, complete approval, of the professional
27 manager. As you have said, Mr. Shepherd, before,
28 and also he -- the professional manager, Mr.
29 Wirth, any large transaction, he usually got
30 approved by the Central Bank.

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2 Q. When you approved or disapproved
3 actions by that bank, were you exercising your
4 own independent judgment as a director and
5 chairman of the board, or were you doing what
6 you were told to do by the president of
7 Atlantic Acceptance Corporation?

8 A. I exercised what I was told to do
9 and what I was not told to do, and I believe it
10 was not too important. I used to tell Mr.
11 Morgan afterwards if it was not important. If
12 it was something important as far as lending a
13 large sum of money, before I approved it in any
14 way, I have discussed it with Mr. Morgan.

15 Q. When Hugo (Berlin) bought these
16 100,000 shares of Commodore Business Machines
17 for half a million dollars, did you approve that
18 purchase?

19 A. I believe this particular discussion
20 was when Mr. Wirth and Mr. Rheden was here in
21 Toronto.

22 Q. Yes?

23 A. It was discussed with Mr. Morgan.

24 Q. When Hugo (Berlin) sold it to
25 Trans Commercial Acceptance at a profit of
26 \$150,000, obviously that was to the benefit of
27 Hugo (Berlin), was it not?

28 A. Yes.

29 Q. Why did Hugo (Berlin) then purchase
30 the shares of Trans Commercial Acceptance from
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2 Associated Canadian Holdings?

3 A. Because, one, like I said again,
4 this was explained by Mr. Morgan to Mr. Wirth
5 when he was there and, number two, I believe
6 they wanted to have a going -- this is what he
7 told them -- that this is a going finance
8 company and he is trying to borrow money. If
9 they could finance this business, this Trans
10 Commercial Acceptance, it would be a very good
11 business for them.

12 Q. Do you say that Mr. Wirth and
13 Baron Von Rheden approved the purchase of the
14 shares of Trans Commercial Acceptance by Hugo
15 (Berlin) before the transaction was completed?

16 A. Yes, sir.

17 Q. I should tell you, Mr. Tramiel, that
18 you no doubt have seen, as chairman of the board,
19 the statements, financial statements, of the
20 bank at the end of December, 1946, from which it
21 is asserted that the purchase of Trans Commercial
22 Acceptance was completed without the authority or
23 knowledge of the other directors. Could you
24 assist the Commission by commenting on whether
25 that statement in the financial report of Hugo
26 (Berlin) is correct, or not correct? Would you
27 like to see the statement?

28 A. Yes, sir.

29 THE COMMISSIONER: We will take a fifteen
30 minutes recess.

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2 ---A short recess.

3 MR. SHEPHERD: Q. Mr. Tramiel, you have
4 had an opportunity, have you not, to look at
5 Exhibit 3296, consisting in part, a German text
6 of a report and an English translation thereof.
7 Is that so?

8 A. Yes, sir.

9 Q. Now, I want to read to you from
10 the English, and are you able to follow the
11 German, so that you can tell whether or not the
12 English translation is reasonably accurate?

13 A. Yes.

C/6 14 Q. It reads in part as follows:

15 "In the course of a meeting of the
16 "Board of Directors dated December 12,
17 "1964, Management was authorized to
18 "organize a subsidiary company in
19 "Canada in accordance with recommendations
20 "made by the Board.

21 "Prior to this, the recommendation
22 "was made to Management at a meeting of
23 "the Board dated October 1, 1964, to
24 "acquire the existing finance company
25 "Trans Commercial Acceptance Ltd. as
26 "a subsidiary, of course after completing
27 "the necessary scrutinies and inves-
28 "tigations. However, after checking
29 "out Trans Commercial Acceptance Ltd.,

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2 "of the Board, and Mr. Wirth, member of
3 "the Management, gained the conviction
4 "that it would be of greater advantage
5 "not to acquire an existing finance
6 "company but to form a new company.
7 "The formation of the Hugo Oppenheim-
8 "bank (Canada) Ltd. was taken into
9 "consideration and a draft of a partner-
10 "ship agreement drawn up with the help
11 "of the Canadian firm of solicitors
12 "Solomon & Singer."

13 Then, I will skip the portion dealing with
14 the composition of the board and the like.

15 A. Yes, sir.

16 Q. "As already mentioned, the formation
17 "of the Hugo Oppenheimbank (Canada) Ltd.
18 "was approved by the Board of Directors
19 "in its meeting of December 12, 1964,
20 "providing its recommendations and the
21 "provisions of the partnership agreement
22 "were observed."

23 Then, going down to this paragraph, skipping
24 down and going to this paragraph, this is what I
25 wanted to put to you. The report states:

26 "On December 24, 1964, the Hugo
27 Oppenheimbank (Canada) Ltd., without
28 "the knowledge of the officers of the
29 "Company, acquired a 100 per cent
30 "interest in Trans Commercial Acceptance Ltd.

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2 "from Associated Canadian Holdings Ltd.,
3 "that is an interest in a finance company
4 "the acquisition of which was turned
5 "down by Mr. Wirth, an officer of the
6 "Company and by Baron Von Rheden-Rheden,
7 "Deputy Chairman of the Board. In the
8 "course of a meeting of the Board of
9 "Directors of the Hugo Oppenheimbank
10 "(Canada) Ltd. the capital stock of
11 "the Hugo Oppenheimbank (Canada) Ltd.
12 "was transferred to the Hugo Oppenheim
13 "& Sohn Nachs. Berliner Privatbank A.G."
14 And I am ceasing to quote, but further in the
15 report, it specifically says that the directors
16 of Hugo (Berlin) most certainly thereafter by
17 their conduct ratified the purchase of Trans
18 Commercial Acceptance, but that report says
19 that the directors of the bank did not know
20 nor did they approve of the acquisition of
21 Trans Commercial Acceptance by Hugo Oppenheimbank
22 (Canada) Limited, a subsidiary of the German
23 bank.

24 What can you say to assist the Commission
25 on this matter?

26 A. One, when you are saying a report,
27 this is the statement from the general manager
28 of the bank. This is an audit report which I
29 did not see and I was the chairman of the board
30 and the reason why I didn't see it was because
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2 would be better for them.

3 No. 2, this statement here, Mr. Shepherd,
4 was prepared by a company called Arthur Anderson,
5 which when I became chairman have demanded that
6 we should employ Art Anderson as the auditor
7 to make sure that the statement is correct and
8 right.

9 Q. Yes?

10 A. Which even the general manager
11 wasn't very happy about it, because he felt --
12 well, he will not be able to explain in the
13 proper way which I had to convince him that Art
14 Anderson in Germany is a German auditor, but
15 they do know international accounting. So, as
16 far as the figures is concerned were correct.
17 But, as far as the statement is concerned --
18 the president's message was written after
19 June 14th.

20 Q. Then do you say, to sum it up,
21 that you are satisfied the information set out
22 respecting the acquisition of Trans Commercial
23 Acceptance in the Arthur Anderson report was
24 obtained by Arthur Anderson from the management
25 of the bank? Is that correct?

26 A. Correct.

27 Q. And do you refer to Mr. Wirth?

28 A. Yes.

29 Q. And do you say that insofar as that

30 information is concerned, is to the effect that
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2 the directors of Hugo (Berlin) did not know that
3 Hugo Oppenheimbank (Canada) Limited acquired the
4 shares of Trans Commercial Acceptance and did
5 not approve of such acquisition in advance,
6 because they had considered it and turned it
7 down. That these statements are untrue. Is
8 that correct?

9 A. Mr. Wirth in his report says also,
10 that a silent approval may, however, have been
11 taken for granted. He states it himself in the
C/ 12 report.

13 Q. Well, Mr. Tramiel, would you not
14 agree, there is a difference between saying
15 that silent approval may have been taken for
16 granted and actual approval being obtained and
17 he is saying, that no approval was obtained
18 and indeed the management of the bank rejected
19 the idea of purchasing Trans Commercial
20 Acceptance?

21 A. Then, why would he say that the
22 silent approval might have been taken for granted?

23 Q. Mr. Tramiel, it is, I think, a
24 matter of some considerable importance to you
25 to explain as best you can and put forward your
26 own position respecting this. Do you say that
27 Mr. Wirth did know in advance of the purchase
28 of Trans Commercial Acceptance shares that Hugo
29 Oppenheimbank intended to purchase those shares
30 and that he did approve it in advance?

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2 A. Yes. He did, sir.

3 Q. And how did he communicate that
4 approval to you?

5 A. Verbally.

6 Q. On what occasion was it?

7 A. When he was here.

8 Q. Is this when he was here in November,
9 following the completion or preceding the
10 completion of the Cimcony transaction in Nassau?

11 A. When Hugo Oppenheim (Canada) was
12 formed.

13 Q. And do you say that Baron Von Rheden
14 also knew and approved of the acquisition of
15 Trans Commercial Acceptance by the wholly-owned
16 Canadian subsidiary of Hugo (Berlin) before the
17 transaction was consummated?

18 A. Yes, sir. Because even one of the
19 reasons, Mr. Shepherd, when they have granted the
20 loan of \$650,000, to Trans Commercial, the way
21 they have explained to me, if it would be a
22 complete stranger, they would have to give a
23 complete report to the bank, to the Central Bank,
24 but because it was a subsidiary, they didn't have to.

25 Q. What did they want Trans Commercial
26 Acceptance to do?

27 A. To continue in the finance business
28 in Canada.

29 Q. Why did they want two such companies,
30 Hugo Oppenheimbank (Canada) Limited and also Trans
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2 Commercial Acceptance?

3 A. Well, the way they have explained
4 to us when they were here, is to buy a going
5 concern would take them a certain amount of time
6 to get it approved, but to open up a subsidiary,
7 brand new, they could get the approval much
8 faster.

9 THE COMMISSIONER: Q. It is approval by
10 whom, Mr. Tramiel?

11 A. By Central Bank, sir.

12 Q. Yes?

13 A. I had discussions personally with
14 Art Anderson about this Trans Commercial many
15 times, because Art Anderson was also our auditor
16 in the factory.

17 MR. SHEPHERD: Q. You are speaking of the
18 Willy Feiler plant?

19 A. Yes.

20 Q. Yes?

21 A. And just -- it seems this was written
22 after June 14th and Mr. Wirth started to take a
23 different position.

24 Q. Was Hugo Oppenheimbank (Canada)
25 Limited intended to take part in the business of
26 financing ventures?

27 A. I believe it was more intent --
28 I am not sure -- but I believe -- I believe, it
29 was more intent to be like a holding company for
30 the German bank.

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2 Q. Did it in fact discharge that
3 function?

4 A. I don't know. Well, it wasn't that
5 long, sir. It was -- this is in December and
6 everything stopped in June.

7 Q. Could you assist us as to why, once
8 Hugo Oppenheimbank was formed, the bank required
9 Trans Commercial Acceptance at all? That is
10 what I am not clear on.

11 A. Because I think it was a going
12 company by then.

13 Q. But it dealt only with Mr. Morgan's
14 companies?

15 A. Yes.

16 Q. Is there anything more that you wish
17 to say concerning the acquisition of Trans
18 Commercial Acceptance?

19 A. No.

20 Q. Evidence was given, Mr. Tramiel,
21 before the Commission, relating to the disposition
22 of the 120,000 shares of Atlantic Acceptance
23 Corporation, which Hugo Oppenheim acquired in
24 November, 1964, and I would be glad to show you
25 the documents if you require them. Perhaps first,
26 I can put the transaction to you and you may be
27 sufficiently familiar with it to be able to assist
28 us.

29 The evidence was that on the 4th of March,
30 1965, a share certificate for 4,000 shares of
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11850-A

2 Atlantic Acceptance Corporation Limited, apparently
3 the property of Hugo (Berlin) and forming part of
4 this block of 120,000 shares, and I might say in
5 parentheses, the property of Hugo (Berlin) subject
6 to any rights Cimcony may have had, that such a
7 certificate for 4,000 shares was delivered to
8 Barrett, Goodfellow, and Barrett, Goodfellow were
9 directed to hold those shares together with certain
10 other securities, and to pay a \$100,000 out for
11 the benefit of Associated Canadian Holdings, and
12 Associated Canadian Holdings recorded that it
13 intended this money for the purchase of^a/Lucayan
14 Beach investment in some form.

Now, stopping there, are you familiar generally with the transaction so that you can describe it?

18 A. I am familiar with the \$100,000.

19 Q. Yes?

20 A. Which was invested in L.B.H. Manage-
21 ment. The money came from Barrett, Goodfellow from
22 the Associated account.

24 (Page 11851 follows)

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D/l/FP

1 Q. In whose name did that investment

2 of 100,000 in L.B.H. Management stand thereafter?

3 A. I believe in Associated Canadian
4 Holdings.

5 Q. What securities were issued to
6 Associated Canadian Holdings for that payment?

7 A. I believe the shares, part of the
8 shares of the company.

9 Q. Of L.B.H. Management?

10 A. Yes.

11 Q. Do you recall the number of shares
12 or the percentage?

13 A. Mr. Shepherd, this company was,
14 again, a company which was to help out Mr. Morgan.

15 Q. Yes?

16 A. Morgan asked to form this company;
17 he asked that Associated should become a partner
18 with the company, a 50 per cent partner. I didn't
19 see the shares - to answer your question, it was
20 my opinion it was not done to make a profit.

21 From me, as one of the officers of Associated,
22 was to help out Mr. Morgan in the problem that
23 he had in Freeport.

24 Q. Was it not intended that L.B.H.
25 Management would make a profit?

26 A. Mr. Morgan was telling me it could
27 make a big profit.

28 Q. Yes?

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A. I didn't see it, that it would make a big profit. I was there only to make sure, to help Mr.Morgan out of this predicament in Freeport.

Q. Why are 4,000 shares in Atlantic apparently, subject to such explanation as you may be able to give, the property of Hugo (Berlin) pledged with Barrett,Goodfellow for the benefit of Associated Canadian Holdings?

A. I believe that Associated Canadian Holdings had in the portfolio a certain amount of Atlantic shares.

Q. Yes?

A. Which shares they were I couldn't answer you. I know that they have pledged through Mr. Goodfellow shares which they have owned.

Q. Are you able to state whether any shares of Atlantic Acceptance forming part of the block of 120,000 shares purchased by Hugo (Berlin) were delivered to Barrett,Goodfellow to stand as security for the moneys advanced to Associated Canadian Holdings?

A. No, I can only state that no shares of Hugo Oppenheim (Canada) were given as security for this loan, for the \$100,000.

I know that Associated had the 4,000 shares of stock. If the name, you notice on

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2
3 the certificate, was not Hugo Oppenheim, then I
4 couldn't answer you.
5

6 Q. I was referring to Hugo Oppenheim
7 (Berlin). Were any shares in which Hugo Oppenheim
8 (Berlin) had any interest as owner, subject to
9 any claims Cimcony might have had, pledged for
the benefit of Associated Canadian Holdings?
10

11 A. No, I don't see any reason why
they would have done it. To answer your
12 question, the way you said "Berlin", there was
13 a discussion I had with Mr.Morgan and telling
14 him the trouble with Mr. Wirth, with payments
15 to Cimcony as far as the dividends are concerned.
16

Q. Yes?

A. Because he is receiving the
18 dividends from Atlantic less withholding tax.
19

Q. Yes?

A. Mr. Weinrott was entitled to the
20 total amount. This is what Mr.Wirth was
21 explaining to me.
22

Q. Yes?

A. At that time Mr. Morgan told me
24 this. Mr. Wirth, if he would transfer all of
25 the shares to the subsidiary, Hugo Oppenheim
26 (Canada) he could avoid this tax.
27

Q. Yes?

A. And I have told him so, and the
shares were transferred piece by piece till the
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1 J. Tramiel 11854

2 total amount was transferred.
3

4 Q. Approximately when did this occur?

5 A. Maybe March. Exact dates I am not
6 really sure.

7 Q. What would be the bracket of time
8 within which you considered this occurred?

9 A. I would say starting maybe February.

10 Q. And ending?

11 A. May.

12 Q. So the block of shares which Hugo
13 (Berlin) had purchased were brought to Canada,
14 is that correct?

15 A. Yes, sir.

16 Q. Who brought them?

17 A. They were mailed. I brought them
18 personally, a certain amount, when I was there.

19 Q. Were they transferred into the name
20 of Hugo Oppenheimbank (Canada) Limited?

21 A. I believe some of them were.

22 Q. Then I take it these share
23 certificates were endorsed by Hugo Oppenheim
24 (Berlin)?

25 A. Yes.

26 Q. When you received them?

27 A. Yes, I believe they were.

28 Q. Did Hugo Oppenheimbank (Canada)
29 Limited then own the shares which were registered
30 in their name?

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A. The legal part of this I couldn't answer you, sir, if they owned them or not.

Q. I put it to you that Hugo Oppenheimbank (Canada) Limited does not record any payment to its parent or any liability to its parent in respect of the acquisition of those shares. Does that agree with your recollection?

A. Yes.

Q. So these shares then are in the hands of Hugo Oppenheimbank (Canada) Limited for what purpose?

A. One, as Mr. Morgan put it, this way Mr. Weinrott will be able to receive the total amount of dividend from Atlantic Acceptance.

Q. Yes?

A. And he would not have to pay the withholding tax. This is one of the reasons, at that time.

Q. And what rights did Hugo Oppenheimbank (Canada) Limited have then to deal with those shares, to deal with them as it chose?

A. I believe so.

Q. Sell them, pledge them, do anything it chose with them, although Hugo Oppenheimbank (Canada) Limited had not paid its parent or set up any liability to pay them?

A. I think any shares which they would sell, they would give a credit. Again, I did not

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2 go into this particular part exactly how it worked.
3 If there would be a problem in it, I think I
4 would have been advised and then I would go over
5 to Mr. Morgan and talk to him about how and what
6 should be done about it.

7 Q. If these shares were brought here
8 for the purpose of avoiding withholding tax for
9 Cimcony Limited, would it not have been necessary
10 to register them in the name of Hugo Oppenheimbank
11 (Canada) Limited as soon as they were received?

12 A. Mr. Shepherd, this is what I was
13 told, and when they came in, if they were
14 transferred into the name of Hugo Oppenheim I cannot
15 answer you, because I did not look into the
16 affairs on a daily basis, and I was only called
17 in if somebody wanted to have a question answered.

18 Q. Who had physical possession of
19 these shares?

20 A. I believe Hugo Oppenheim (Canada).

21 Q. Where?

22 A. In Toronto.

23 Q. In a safety deposit box?

24 A. I believe so. I really don't know.

25 Q. Who would be the officers of Hugo
26 Oppenheimbank (Canada) Limited?

27 A. I believe that I was the president
28 of the company. I'm not sure. Was I?

29 Q. Yes.

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3 A. Wasn't the Baron the president?

4 I was an officer of the company.

5 Q. You were the Canadian officer in
6 any event, were you not?

7 A. Yes.

8 Q. Let me put this to you. Did Hugo
9 Oppenheim und Sohn Pravatbank Berlin authorize
10 the pledging of any shares of Atlantic Acceptance
11 Corporation Limited to stand as security for
12 moneys advanced to Associated Canadian Holdings
13 Limited?

14 A. I don't know if each specific
15 loan was given an approval, but I know there
16 was a total approval, but as far as the dealings
17 in Canada is concerned I think they even gave
18 me a letter that we can deal, buy and sell
19 securities in Hugo Oppenheim (Canada) on behalf
20 of the German bank.

21 Q. Could you pledge the securities
22 of the bank or its subsidiary for the benefit
23 of another company, that is what I am trying to
24 get at.

25 A. That way you are putting it to me,
26 I am only guessing, and from my own guessing I
27 don't think I could for another company, but
28 if the individuals who owned the companies
29 would have agreed to it, like I said, I would
30 have done it. I didn't do it on my own, if it

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3 was done. I don't recall any particular case
4 like this.

5 Q. Let us deal specifically with these
6 4,000 shares which were pledged with Barrett,
7 Goodfellow.

8 A. Well, could you show me those documents,
9 sir?

10 Q. Yes. Could I have Exhibit 3418,
11 please. I begin by showing you Exhibit 3418,
12 which is a printed form addressed to Barrett,
13 Goodfellow and Company, dated March 4, 1965,
14 reading:

15 " Please accept this document as
16 "your authorization to receive from
17 "Associated Canadian Holdings 4,000
18 "shares of Atlantic Acceptance
19 "Corporation for their account against
20 "payment by you of \$100,000, the debit
21 "to be passed to their account.

22 " Yours very truly,
23 " Associated Canadian Holdings
24 " (Signed) Jack Tramiel."

25 That is your signature, Mr. Tramiel?

26 A. Yes.

27 Q. Can you assist us as to where those
28 shares came from?

29 A. I believe from Associated Canadian
30 Holdings.

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3 Q. You believe that they are the
4 property of Associated Canadian Holdings?

5 A. Yes, sir.

6 Q. Did Associated Canadian Holdings
7 buy any part of the block of 120,000 shares from
8 Hugo (Berlin)?

9 A. This I couldn't assist you.

10 Q. If Associated Canadian Holdings
11 did purchase any of that block of shares, would it
12 be fair to suppose that it would be recorded in
13 the books of Associated Canadian Holdings and in
14 the books of Hugo Oppenheim (Berlin)?

15 A. Are you asking me to guess?

16 Q. You mean that you consider it quite
17 possible that Associated Canadian Holdings would
18 have purchased \$80,000 worth of shares from Hugo
19 Oppenheim (Berlin) and the transaction would not
20 be recorded in Associated Canadian Holdings
21 books or the books of Hugo (Berlin)?

22 A. As far as Associated is concerned
23 I couldn't answer you, because Mr. Wagman was
24 handling the books. As far as ---

25 Q. Dealing thenwith those very shares
26 which you directed Barrett, Goodfellow to hold,
27 can you tell us whether or not Hugo Oppenheim
28 (Berlin) or Hugo Oppenheimbank (Canada) authorized
29 the pledging of those shares for the benefit of
30 Associated Canadian Holdings?

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2
3 A. Mr. Shepherd, do we have here a
4 statement from Associated which shows the securities
5 which Associated held?

6 Q. Yes, certainly, Mr. Tramiel.

7 A. On that day.

D/2 8 Q. We also have several hours of
9 evidence showing that those shares came from the
10 block of 120,000 shares owned by Hugo (Berlin).

11 A. Well, I'm not talking of evidence.
12 As far as do we have -- can I see that list?

13 Q. Yes, of course. Then you will be
14 able to assist us, will you, and you will be
15 able to say that those shares are the property
16 of Associated Canadian Holdings or are not the
17 property of Associated Canadian Holdings.

18 A. Only by guessing. I know that ---

19 Q. Well, is it of a great deal of
20 assistance and worth the time and trouble, Mr.
21 Tramiel, if you are not going to be able to assist
22 us much more than that?

23 A. No, because I do recall in my mind
24 Associated Canadian Holdings did own a certain
25 amount of Atlantic stock.

26 Q. Indeed they did, Mr. Tramiel. There
27 is no question about that. I concede it readily.

28 A. If they did, why didn't they transfer
29 their own stock?

30 Q. Mr. Tramiel, the question I am putting
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3 to you is: There has been a great deal of
4 evidence before this Commission that this stock
5 appears to be the property of Hugo Oppenheimbank
6 (Berlin). I am asking you, can you tell us
7 where that stock came from, or can you tell us
8 whether or not Hugo Oppenheimbank (Berlin)
9 authorized the pledging of shares which were
10 its property for the benefit of Associated
11 Canadian Holdings?

12 A. My answer is that if Associated
13 did not buy the stock, then the stock belonged
14 to Associated Canadian Holdings, which they have
15 given to Barrett, Goodfellow.

Q. I show you a letter, Exhibit 3419,
16
addressed to Hugo Oppenheim und Sohn Nachf,
17
but the address is shown as 946 Warden Avenue,
18
Scarborough, Ontario, "Attention Mr. Kapp" and
19
signed by Mr. Wagman. I will read it.
20

"Dear Sir:

22 " We enclose herewith our cheque
23 "in the amount of \$420, representing
24 "the dividend credit to us and relating
25 "to Atlantic Acceptance Corporation
26 "shares dividend on 2,100 common
27 "shares owned by you. We trust you
28 "will find this in order and remain,
29 "
30 " Yours truly,
31 " Associated Canadian Holdings
his page generously brought to you by Anil Sharma
32 " Per H. Wagman "

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3 There is attached a deposit receipt indicating
4 that that \$420. was deposited to the account
5 of the Berlin bank here in Canada. Can you
6 assist us as to why Associated Canadian Holdings
7 is paying to the Berlin bank a divided arising
8 out of shares owned by the Berlin bank but
9 received by Associated Canadian Holdings?

10 A. Mr. Shepherd, if the shares were
11 made out to the German bank, wouldn't the
12 dividend be sent directly to the German bank?

13 Q. Oh, Mr. Tramiel, I suggest that
14 since you were dealing with this block of
15 shares, you know as well as I do that many of
16 those shares were registered in the name of
17 O'Brien and Williams, they were in street form.

18 A. So they were not in Hugo Oppenheim's
19 name.

20 Q. Quite correct, they were not
21 registered in the name of Hugo Oppenheim; they
22 were in street form. Why is Associated
23 Canadian Holdings sending a dividend cheque to
24 Hugo (Berlin) bank for shares owned by the
25 Hugo (Berlin) bank if Associated Canadian
26 Holdings does not have any shares which were
27 owned by the Hugo (Berlin) bank?

28 A. I couldn't answer you. It could
29 have been they paid it after the dividend or
30 before the dividend, and this particular letter

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I have never seen and I didn't know Mr. Wagman
is so formal of sending out letters like this.
It was always discussed verbally.

Q. Did Mr. Wagman write, so far as you
were aware, on many occasions to the Hugo Oppenheim-
bank of Berlin addressed to the address of Commodore
Business Machines on Warden Avenue?

A. I don't recall any letters.

Q. Is there anything further you can
assist us on in respect of this matter, or may we
pass on?

A. I believe I gave you the answer as
much as I can.

Q. Thank you. Evidence was given
before the Commission generally to the effect that
on 10th June, 1965 Commodore Business Machines
(Canada) Limited entered into an agreement with
Traders Finance Corporation or one of its
subsidiaries, whereby Commodore Business Machines
(Canada) Limited was borrowing, if memory serves
me, the sum of \$3 million. Is that correct -
\$3 million?

A. A little bit less, I believe, about
two million nine.

Q. May I have Exhibit 3420, please.
You and Mr. Kapp, for the additional security of
the lending company, pledged 75,000 shares of
common stock of Atlantic Acceptance for this loan.

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1 Could I have Exhibit 997.1, please. Evidence
2 was further given that there is in existence,
3 and the document was produced, a contract made
4 between you and Mr. Kapp on the one hand, and
5 Hugo Oppenheimbank (Canada) Limited on the other,
6 relating to the purchase of 75,000 shares on
7 terms set out in the agreement. Could I have
8 Exhibit 997.2, please. Evidence was further
9 given that there is in existence a document signed
10 by Mr. Wirth and Mr. Lange on behalf of Hugo
11 Oppenheim und Sohn Berlin relating to this
12 matter and granting certain consents. Now, I
13 will show you the documents, but first, generally,
14 are you familiar with this transaction?

A. Yes, I am.

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J. Tramiel

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3 Q. I show you Exhibit 3420, which is
4 the contract whereby Traders Realty Limited is
5 lending moneys to Commodore Business Machines
6 (Canada) Limited. It is \$3 million, I observe.

7 And I show you Exhibit 997.1, being the
8 agreement between Hugo Oppenheimbank and yourself
9 and Mr. Kapp; and 997.2, being a document not
10 titled, but which I will call a consent.

11 Now, with those documents in front of you
12 can you assist us as to what this transaction
13 was about?

14 A. Commodore Business Machines bought
15 a company called Wilson Stationers.

16 Q. Yes?
17 A. It was approved by the board of
18 directors of Commodore and Mr. Morgan, and especially
19 Mr. Gregory, before it was approved, and at the
20 meeting, told management that when the date of
21 closing will come about we will have the moneys
22 to pay for it. At one point we didn't have the
23 money to pay for this transaction.

24 Q. May I take it, Mr. Tramiel, that
25 you understood they were expressing more than a
26 pious hope but were indicating they would make
27 available the money?

28 A. Yes.

29 Q. Did you say Mr. Morgan and Mr. Gregory?

30 A. Yes.

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1 J. Tramiel

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Q. Did they make this assertion in such form that you considered the moneys would be jointly found by them?

A. No, no. But there was never any difficulties, these gentlemen have agreed to a transaction at the board of directors, I have no doubts all that money will be given or lent to the company to pay when it is required.

Q. So, in the belief, then, that the money would be found by one or other or both of these directors, I take it the company agreed to purchase Wilson Stationers?

A. Yes.

Q. Then what happened?

A. When we came to the last few days of the closing I have advised Mr. Morgan that this is now coming to the closing and we will require the money.

Q. And approximately when would this be? I believe the transaction was to be completed around the 14th of June, was it not?

A. Yes, I believe so.

Q. Approximately when would it be you informed Mr. Morgan that you now required the money?

A. It could have been the 15th of May or the 1st of June.

Q. Yes. And what was his reply?

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J. Tramiel

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A. His reply that he is very, very

short of money at the present time, and I should try and get the money someplace else. That was a tremendous shock to me.

Q. What step did you take then?

A. I started to ask everybody who I have seen if he knows where I can borrow \$3 million.

Q. Is that the first occasion on which

Mr. Morgan had found it necessary to declare himself unable to come up with the money when required?

A. Yes, sir. And I had a number of discussions with a number of finance companies in New York City. And they all --- I could see they would take a long time to complete it. Anyway, I applied for the loan.

And then Mr. Solomon has recommended that we should see Traders.

Q. Did you approach Mr. Gregory in this connection, in the light of what you have said?

A. I did. When I say I approached him, Mr. Gregory told me that he is trying to get some loans paid because he is short of money, too, like private loans he made against the debentures of Commodore, etc. I did not see any sense to go to Mr. Gregory if he was trying to get a loanback for \$100,000. I don't know if

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I had a meeting -- I believe there was a board
of directors meeting and the telling of these
difficulties, what should be done. To me it
was quite important. And I also felt the
company was an excellent company for Commodore
Business Machines.

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Q. Yes?

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A. Anyway, we went to Traders. They
looked at it. And a few days later we went
there again and they gave us certain terms on what
basis they would lend the money -- or they indicated
it to Mr. Solomon. I am not sure. They said
they wanted personal guarantees from the officers
of the company plus additional security for so-and-
so many dollars.

When I had this information I went to Mr.
Morgan and told him those are the basis I can borrow
the money. He asked me, "Is there some way you
can get security?" I advised him we had securities
in those companies and those companies which he
was owner of. I said, "Could we those? Could
we those?". He said, "Well, if it is going to
help you get the loan, go ahead."

He told me on what basis this agreement
should be worked out.

We went back to Mr. Solomon. We had
written up an agreement. I believe that we have
paid -- Commodore has paid 3 per cent interest for

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the time of this option of the agreement, for
the borrowing or selling the shares.

5 Q. I am sorry, I didn't follow you on
that, Mr. Tramiel.

7 A. I believe we borrowed the shares or
8 the shares were sold to us, we had an option to
9 buy them.

10 Q. You are talking now of the shares
11 of Atlantic Acceptance?

12 A. Yes, sir.

Q. The 75,000 shares?

14 A. Yes. Commodore Business Machines
15 was paying 3 per cent interest for this guarantee.

16 Q. That is to say, you and Mr. Kapp
17 extended personally your guarantee, and Commodore
18 Business Machines (Canada) Limited paid 3 per cent
19 of the sum guaranteed as recompense for you having
20 extended the guarantee?

21 A. Yes. In turn we have paid this to
22 Hugo Oppenheim (Canada) Limited; with this
23 security and with the personal guarantee Traders
24 granted the loan.

25 Q. And how did you get -- perhaps it
26 would assist to look at the contract with Hugo
27 Oppenheimbank (Canada) Limited. How did you get
28 those 75,000 shares of Atlantic Acceptance which
29 you pledged?

30 A. That would be Hugo Oppenheim (Canada)
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Limited

4 Q. And do you say you purchased them
from Hugo Oppenheimbank (Canada) Limited?

6 A. We had the right to buy them at
7 the end or to return them at the end of the
agreement.

9 Q. I think while you are indeed giving
10 the essence of it, Mr. Tramiel, the form is a
11 little different. I call to your attention the
12 Hugo Oppenheimbank ---

13 THE COMMISSIONER: It is what exhibit?

14 MR. SHEPHERD: 997.1, Mr. Commissioner.

Q. Hugo Oppenheimbank (Canada) is
called the vendor, and you and Mr. Kapp are called
the purchasers. It recites that the vendor is
the owner of 75,000 shares of Atlantic Acceptance,
and the vendor has agreed to sell these shares to
you and Mr. Kapp. And it provides that you
and Mr. Kapp will purchase from Hugo Oppenheimbank
(Canada) those shares at a price of \$20 per share,
the total price being \$1,500,000. And the
vendor, Hugo Oppenheimbank represents and warrants,
as of the date of closing, it will be -- I am sorry,
(a) the vendor is the owner of the said Atlantic
shares; and (b) said Atlantic shares are free
and clear of all liens, charges and encumbrances
of every nature and kind whatsoever.

Then it states that you are to pay for
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these shares by delivering to Hugo Oppenheimbank
(Canada) a promissory note in the form which
is attached. It is a 6 per cent note, falling
due as to principal and interest on the 14th
of March, 1966; and that Hugo Oppenheimbank is
to execute and deliver to you on closing a
"put option agreement" in a form attached, which
put option agreement provides in essence that
at any time up to the 1st of March, 1966,
which is the date on which the note falls due,
you and Mr. Kapp have the right to hand the
shares back to Hugo Oppenheimbank (Canada) Limited,
in which case they will re-acquire them at
\$20 a share.

17 Is that your recollection of the contract?

18 A. My recollection is the way I
19 mentioned to you before, but you go into detail
20 the way the contract is.

Q. Yes. So, the contract, you will
agree, indicates that you bought these shares
on the terms that you gave a promissory note for
the purchase price, and the vendor gave you a
put option agreement entitling you and Mr. Kapp
to hand the shares back at any time up to the
1st of March, 1966, at \$20 per share?

22 A. Yes.

29 Q. Who negotiated that contract on
behalf of Hugo Oppenheimbank (Canada) Limited?

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A. I did.

Q. And what knowledge did the Berlin bank have of the transaction, and when did they acquire it? I direct your attention to the next exhibit, 997.2, I think. The document I referred to as a consent?

E/2

A. Yes, sir.

Q. Now, can you assist us as to what the knowledge of the Berlin bank was of this transaction, and when they acquired it, and how they acquired it?

A. The first knowledge is, which
14 was in my opinion the man which controlled all
15 those companies, which was Mr.Morgan, and he
16 had knowledge before anything started, that
17 this is the basis I can get the loan from Traders.
18 When I say "I", that Commodore Business Machines
19 (Canada) Limited can get the loan from Traders.
20 So, he was advised first, and he put the thing
21 in motion on what basis and how it should be
22 done.

Q. Yes?

A. And this was done by telephone or in some form, Mr. Wirth was advised of the transaction.

Q. Who telephoned him, Mr. Tramiel?

A. At the present time I don't recall who telephoned him. Maybe ---

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J. Tramiel

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THE COMMISSIONER: Was it you?

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A. It could have been. It could have been. But right at this particular moment I don't recall. It could also have been that I was there before the actual transaction took place.

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MR. SHEPHERD: Q. I suppose almost anything could be, Mr. Tramiel, but can you not assist us as to how the Hugo(Berlin) bank learned of this transaction?

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A. By telling him, by telling him in some form, me personally, because I was very often in Germany, almost every month.

Q. You were not in Germany between

the 10th and 14th of June, 1964, Mr. Tramiel,

and time is very narrow in this instance.

A. I could have been before when I

already knew on what basis we could borrow from

Traders.

Q. I should have thought, Mr. Tramiel,

if it were you to whom fell the task of explain-

ing to Hugo Oppenheim (Berlin) why they should

enter into this transaction, or consent to their

subsidiary entering into it, that conversation

would have stuck in your mind, you would never

forget it.

A. The only thing that stuck in my

mind at this time, Mr. Shepherd, that I employed

Mr. Wirth in the German bank to find the \$3 million,

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too. So, there was a discussion about it.

Q. Do you feel obliged, then, to
leave it that while you were confident in some
manner Hugo Oppenheim (Berlin) officers or
directors heard in advance about this dealing
with 75,000 Atlantic shares, having a price of
one and a half million dollars, you are not
at the moment able to tell us precisely how it
was communicated to them, or who it was who
communicated it?

13 A. How I mean who, it must have been
14 me. But here we have a document which was
15 signed by them, so they must have known about it.

Q. I am certainly coming to that.

17 You say it must have been you. Do you recall?

A. I don't recall.

Q. Telling them?

A. I was telling them about the
transaction. The exact date I don't recall,
don't recall the exact conversation, but I know I
told them. I know we discussed \$3 million loan.
I know we have advertised in Europe to try to
borrow the \$3 million. And I can only assume
that I discussed it with them, because they just
wouldn't have given me this particular letter.

28 Q. Now, when did you get the letter?

I put it to you, Mr. Tramiel, in fairness to

30 you, you got the letter in July. I ask you, did

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1 J. Tramiel 11875

2 you get it in July?
3
4 A. I could have.
5 Q. That is to say, when you were over
6 on the occasion of the settlement of all the
7 claims and counterclaims which existed after
8 Atlantic's collapse?

9 A. I don't know if I wasn't there
10 before that.

11 Q. Well, when were you in Berlin after
12 the 14th of June?

13 A. I can't -- I was there very, very
14 often, and especially after --- When you mention
15 July, it could have been after the 14th of June,
16 immediately after the 14th of June, because the
17 factory would have been completely shook up
18 because of Atlantic. The people knew Mr. Morgan,
19 knowing he was chairman of Atlantic, and Mr.
20 Feiler knew. I must have been there right after.

21 THE COMMISSIONER: You appreciate "it
22 could have been" and "I believe" does not advance
23 the state of our knowledge very much further.
24 Were you there or were you not? You must
25 remember, this is only what, eighteen months ago,
26 and at a time of critical importance in your
27 business affairs. Now, surely you remember
28 whether you were in Berlin or not?

29 A. Mr. Commissioner, I have spent a
30 tremendous amount of time in Berlin. I was going
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3 to Berlin almost on a weekly basis. And to say
4 the exact date, I am not in the position to
5 answer you on that basis.

6 Q. I do not think anybody is asking
7 you the exact date. We are asking you whether
8 you were in Berlin in July, immediately -- or,
9 in June, I think it is, is it not?

10 MR. SHEPHERD: June or July.

11 THE COMMISSIONER: Q. If you were in Berlin
12 in June or July immediately after the collapse of
13 Atlantic?

14 A. I believe I was. That is all I
15 can answer you, sir.

16 Q. Well, "believe" -- If you want my
17 opinion, at this stage you can answer yes or no.

18 A. I can't say yes or no, because I
19 do not have the facts.

20 Q. In that case, I do not believe you.
21 Is that clear? And you are speaking on oath.

22 Proceed.

23 MR. SHEPHERD: Q. Was it after the collapse
24 of Atlantic that the consent of Hugo Berlin was
25 executed to this transaction with Hugo Oppenheim-
26 bank (Canada) and yourself and Mr. Kapp?

27 A. Mr. Shepherd, I would like to
28 answer you, but I am a little bit at the present
29 time upset. If you do not believe me, how
30 can I answer it?

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3 Q. It is difficult for anyone to
4 say they believe the answer until you have made
5 it.

6 A. I was told before he can't believe
7 me. It is very difficult for me to continue
8 saying anything if you don't believe me.

9 Q. Well, Mr. Tramiel, do you know
10 whether you received that consent -- or, let me
11 put it this way, do you know whether that consent
12 was executed after the collapse of Atlantic?

13 A. This consent was given to me before.

14 Q. Ah! Then, it would have been given
15 to you prior to the 15th of June; is that correct?
16 Is that right?

17 MR. POMERANT: I wonder ---

18 THE COMMISSIONER: Yes, Mr. Pomerant?

19 MR. POMERANT: Mr. Commissioner, Mr. Tramiel
20 has indicated to me that he would like to say
21 something to me. I know it is somewhat unusual.
22 I wonder if this might be, it being so close to
23 the luncheon hour, sir, if it might be convenient
24 to have a recess?

25 THE COMMISSIONER: And if -- And, of course,
26 I have no idea what Mr. Tramiel wants to communicate
27 to you, but let me put this clearly: I am not
28 indicating that I do not accept all of Mr.
29 Tramiel's evidence or any particular part,
30 other than that specific question which was put

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about his recollection of being in Berlin in
3
June or July, 1965, shortly after the collapse
4
of Atlantic Acceptance. I find that impossible
5
to accept, and only that.
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---Whereupon the hearing adjourned at 12:57 p.m.
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to resume at 2:30 p.m.

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1 2 ---On resuming at 2:30 p.m.
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---The witness resumes the stand.

5 6 MR. SHEPHERD: Q. Have you had an
opportunity, Mr. Tramiel, to examine such records
7 8 as you wished to examine, to determine when
in the months of June and July, you were in
Berlin?

10 A. Yes. I did, sir.

11 Q. What result, please?

12 A. I was in Berlin on June 11th. I
13 was in Berlin on July 12th, and I made another
14 trip between those two dates.

15 Q. Where does this information come
16 from, Mr. Tramiel?

17 A. In my passport.

18 Q. Yes. When did you arrive in Berlin
19 in respect of your 11th of June trip?

20 A. I have checked.

21 Q. How long were you there?

22 A. I have only checked out the stamps
23 in my passport.

24 Q. Yes?

25 A. And this is -- Now, this is the
26 facts, what I made a statement previously that
27 I don't recall the exact dates.

28 Q. Well, how many days? Can you
29 assist us? Were you in Berlin on the occasion
30 of the 11th of June trip? The trip in respect of
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which there is a stamp for the 11th of June, 1965.

A. Mr. Shepherd, I am taking this very seriously. I was called here as a witness. You remind me a number of times that I am under oath. I am trying to answer the question, a "yes" or "no". If I remember. If I don't remember -- I have got to say it, that I don't recall.

Q. Well, then, is that your answer?
That you do not know how long you were in Berlin
on the occasion of your attendance on the 11th
of June, 1965?

A. The exact days, no.

THE COMMISSIONER: Q. Well, putting on one side the exact days, was it a short visit or a long one? Was it two or three days, or two or three weeks?

A. Most of my visits, Mr. Commissioner, were short. I am travelling in '65 constantly. I could have been in Europe any times. Four times a month, so they must have been short.

Q. Well, that would be your answer.
It was a short visit. Is that right?

A. Yes.

MR. SHEPHERD: Q. Do you have your passport with you?

A. No, I don't.

Q. Would you undertake that perhaps Mr.

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Pomerant could bring it in at his early convenience, so that we might examine it and perhaps by looking at it we could determine the exact length of the stay in each case.

A. I will be more than glad to give
7 it to Mr. Pomerant, but you could not determine
8 the length of stay because when you arrive in
9 Germany there is no stamp. You only see it when
10 you leave.

12 Q. I see. So, the 11th of June, would
13 have been then the day that you left Germany?

A. Berlin, Berlin.

Q. And we are speaking of the 11th of
June, 1965?

17 A. Yes, sir.

Q. Go ahead, please.

19 A. There are no stamps in Germany. There
20 is only stamps in the passport in West Berlin.

21 Q. Would you look again at this
22 agreement, Exhibit 3420, which bears a date
23 saying it to have been made as of the 10th of
24 June, 1965?

25 A. Yes, sir.

Q. Can you assist us as to when that
document would have been executed. This is
the agreement between Traders Realty and Commodore
Business Machines and yourself and Mr. Kapp?

30 A. Well, the date as of June 10th, I
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3 was here on that particular day or not, I could
4 not answer you again. It could have been that
5 day or before or after.

6

7 Q. You have no recollection whether
8 it was before or after June 10th or June 9th?

9

A. No, I don't.

10

11

12 Q. Well then, I show you an invoice
13 taken from the files of Commodore Business
14 Machines (Canada) Limited, bearing a date, 26th
15 June, 1965, reading: "Re Mr. J. Tramiel to
16 Berlin June 26th, 1965, one aeroplane ticket.",
17 followed by the particulars.

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Looking at that, may one safely take it
that you went to Berlin on the 26th of June, 1965,
as well?

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A. No. Just because the invoice was
June the 26th, does not mean the date I travelled
was June 26th.

Q. But your record says "Re Mr.J.
Tramiel to Berlin June 26th,1965".

A. It could have been.

Q. Did your passport show your
attendance on that occasion?

A. What I am asking my wife to look
into - the passport - did not give me the date of
June 26th.

Q. I see. Was the consent of the
Hugo Oppenheim ---

AA/2

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A. And, if I may -- ?

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Q. Yes.

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A. -- say once more -- if you leave one of the airports in Berlin, you get your passport stamped. If you leave a different way, it is not being stamped. So, this just by accident-like, by looking at the passport, we had the date of June 11th, but I could have been there and not have this stamped in my passport.

Q. That is June 11th, 1965?

A. Yes, sir.

Q. Were you present when Mr. Wirth and Mr. Lange signed the consent to the transaction between yourself and Mr. Kapp and Hugo Oppenheimbank of Canada Limited?

A. Well, if I was there and this was signed on June 11th, I must have brought it along with me.

Q. Well, I would like your recollection, Mr. Tramiel. Do you recall being present when that document was signed?

A. I don't recall the exact or to give you the exact answer -- if I brought it back with me or not.

Q. I didn't ask you whether or not you brought it back. I asked you whether you were present when it was signed.

A. I believe I was.

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made by Atlantic Acceptance Corporation Limited,
on or after the date hereof and before the date
of exercise of this option or before the expiry
date hereof, whichever be later, save and except
the dividend payable on June 15th, 1965, shall
be paid over to the undersigned. That is to
say, Hugo Oppenheimbank (Canada) to be applied
against certain indebtedness owing by Jack
Tramiel and Manfred Kapp to the undersigned.

Is that correct?

A. Yes.

14 Q. So it is plain, is it not, that
15 the benefit of the dividend was to accrue to
16 the purchasers of these shares?

A. Yes, after June 15th.

Q. Yes?

A. I believe, and up to that Atlantic
was paying the dividends quarterly.

Q. Yes?

A. If I may take a look?

Q. I believe that is correct, Mr.
Tramiel.

A. That this agreement is for seven months, I believe.

Q. It is until March, 1966, from June, 1965. So, it would be approximately nine or ten months.

A. That is the reason why I have

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3 mentioned it previously, that the figure was
4 a lower amount of 6 per cent, that we had to pay,
5 because we were getting a certain amount of money
back in the dividends.

Q. Now, Hugo (Berlin) then, on the 11th
of June, 1965, consented to an arrangement whereby
Hugo Oppenheimbank (Canada) Limited would and
did deliver to you 75,000 shares of Atlantic
Acceptance at a value of \$1½ million on terms
whereby you and Mr. Kapp could hold those shares
until the 1st of March of the following year,
and if during that time you elected to pay the
note and keep the shares, of course you were at
liberty to do so, but if for example, the
value of these shares were to decline, you
had a right to hand these shares back and be
credited with the \$1½ million. Is that correct?

cc A. Yes.

Q. And at the time that Hugo Oppenheim
21 (Berlin) entered into this transaction or
22 consented to it, that is on the 11th of June,
23 1965, that company was obliged, was it not, upon
24 demand by Cimcony Limited, to deliver to Cimcony
25 Limited, 88,000 shares approximately, or a number
26 of shares in excess of 80,000, when Cimcony
27 Limited had paid the moneys that it owed.

Is that correct?

A. Yes.

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3 Q. If, therefore, the price of Atlantic
4 shares rose above \$20 per share and Cimcony
5 Limited paid the purchase price, Hugo (Berlin)
6 would have been obliged to go out on the market
7 and buy 75,000 shares in order to make good
8 their obligation to Cimcony Limited, because
9 you had their 75,000 shares which you had
10 bought. Is that correct?

11 A. Yes.

12 Q. Why did they enter into that
13 arrangement?

14 A. This is still the same arrangement.

15 Q. Yes?

16 A. I have answered the question,
17 because they wanted to make a profit.

18 Q. The profit being the difference
19 between the dividends and the 6 per cent interest?

20 A. Yes, sir.

21 Q. And you say that Hugo (Berlin)
22 were prepared to run the risks entailed in their
23 arrangement with Cimcony for that profit. Is
24 that correct?

25 A. We didn't discuss it, but it seems
26 that what you are saying is correct.

27 Q. Did you consider that an imprudent
28 transaction from the viewpoint of the bank?

29 A. Yes.

30 Q. Did you in your capacity as chairman
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2 of the bank, give your assent to it?

3 A. Yes.

4 Q. Why?

5 A. Because it was a profitable
6 transaction.

7 Q. Perhaps you misunderstood my
8 question. I asked, if you considered it an
9 imprudent -- that is, an unwise transaction --
10 and I understood you to say, yes, you did
11 consider it unwise. Perhaps you misunderstood
12 me.

13 A. I did.

14 Q. Yes. Do you say that you considered
15 it to be a wise transaction for Hugo (Berlin)?

16 A. To be a profitable transaction.

17 Q. Did you discuss this matter with
18 your fellow directors, Mr. von Rheden and others?

19 A. Again, I don't recall if I did,
20 or I didn't.

21 Q. You told me before lunch, Mr.
22 Tramiel, that you could not recall whether you
23 had discussed personally this transaction with
24 Mr. Wirth, although you were inclined to think
25 that you had and that it was on the telephone.
26 Did you not tell me that?

27 A. I was not I believe specific,
28 knowing exactly how I told him.

29 Q. Yes?

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A. Seems now, that if I was there during the period of time I must have told him personally.

Q. Did you show them a copy of the contract which you had with you, Hugo Oppenheimbank, so that they would appreciate precisely the terms of this transaction?

A. I don't think so. I don't think that we had a contract, I have a contract then in my possession.

Q. I don't recall the date of that contract which is before you.

A. The 11th of June.

Q. Yes. Looking at Exhibit 997.1, this contract made between Hugo Oppenheimbank (Canada) Limited and yourself and Mr. Kapp, bears date the 11th of June, does it not?

A. Yes.

Q. Was this prepared by Canadian solicitors?

A. Yes.

Q. Was it signed by you on the 11th of June?

A. It couldn't have been.

Q. When did you consider that that document was signed?

A. It must have been signed by me before or after I came back from Germany.

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2 Q. Can you assist us as to whether
3 it was before or after?

A. No. I cannot, sir.

Q. And just leaving this point, Mr. Tramiel, is it quite clear that you are saying that the consent of Hugo (Berlin) which is before you and is marked as Exhibit 997.2, purporting to be signed by Mr. Wirth and Mr. Lange, was signed by them and delivered to you on or before the 11th of June, 1965, in Berlin?

13 A. When I have said I have seen it
14 signed, if it was delivered to me or not, I
15 don't recall.

16 Q. I understand it is possible that
17 it was signed, but not given to you on the 11th
18 of June?

19 A. I don't recall having this document
20 with me, the exact date.

21 Q. Do you recall having the document
22 with you when you returned from Germany on that
23 occasion?

24 A. This is what I meant. That I did
not recall having the document with me when I
25 returned.
26

27 Q. When do you recall the earliest
28 time at which you had possession of that document?

A. Today.

THE COMMISSIONER: Q. Today?

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1 A. Yes.

2 Q. Yes, well, what do you mean?

3 A. I have seen it.

4 Q. Is today the first time you have
5 ever seen it?

6 A. I have seen it when it was signed,
7 sir.

8 Q. Yes, and you haven't seen it since,
9 until today?

10 A. That is right.

11 MR. SHEPHERD: Q. Why?

12 A. I don't know why. I just don't
13 recall seeing it. To me it was signed, it was
14 complete.

15 Q. Do we now have the full account
16 which you are able to give of the execution and
17 delivery of that consent?

18 A. Yes.

19 MR. SHEPHERD: Could I have Exhibit 3426,
20 please?

21 Q. Did you after the collapse of Atlantic,
22 attend in Berlin and there negotiate an agreement
23 which had the effect generally of surrendering
24 to the bank these shares which had stood in your
25 name in return for the surrender by the ~~bank~~ of
26 Canadian securities which Hugo (Berlin) owned?

27 A. Mr. Shepherd, when I have realized
28 of the collapse of Atlantic, what happened, the

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circumstances what happened, immediately, and there was one particular dealing which made me do this to a certain extent, was after June 14th or 17th, Mr. Morgan called me and he asked me to release the receivables from Analogue Controls to Analogue Controls from Trans Commercial.

Q. I don't think I entirely understand that, Mr. Tramiel. Could you explain that more clearly?

A. Mr. Morgan called me.

Q. Yes?

A. He told me that he would like the Trans -- that Trans Commercial should give a letter to Analogue Controls that they are giving up the security what they are holding, which is receivables from Analogue Controls.

Q. I see. Yes?

A. So that they can go to the bank and borrow money.

Q. Yes?

A. I told Mr. Morgan, this was after the collapse, that the way I understood Mr. Morgan told me that he is working very closely with the Montreal Trust and what he is telling me is a good thing for this whole problem.

Q. Yes?

A. At that time, I didn't want to do anything without asking our lawyers and I was

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advised because it looks to me strange that I should get a release from the Montreal Trust.

Q. Yes?

A. Mr. Morgan told me he will get this release, but after a day he did not. He put all pressure he possibly could that I should do this.

Q. Yes?

A. This showed me that Mr. Morgan was out there to do things for his own benefit. I couldn't figure out what benefit he was working on, but I felt at that time, I better straighten out some of the things I was involved with Mr. Morgan.

Q. Yes?

A. And get the security back as fast as I can to the hands of the Clarkson Company, because I cannot rely any more on Morgan's judgment.

Q. Yes?

A. I went to Germany. I know I get a call from Mr. Wirth that the bank, a German bank, I believe the capital has depleted more than 50 per cent. The bank has to be closed. He advised me this on the telephone. I went to Germany and we have arranged that I have taken back everything what we have given the bank for the shares of the bank and we have returned

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the bank's shares to the bank and they went back to the same status as they were before.

Q. Yes. At this time, did Mr. Wirth know that Hugo Oppenheimbank had sold 75,000 shares to you and Mr. Kapp, on the terms to which he consented in that consent dated 11th June, 1965?

A. Again, Mr. Shepherd, to give you a "yes" or "no" answer, I couldn't.

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Q. May I take it then, that notwithstanding that Mr. Wirth and Mr. Lange executed that consent in your presence on the 11th of June, 1965, you considered that it may be that they didn't know that Hugo Oppenheimbank (Canada) had sold the 75,000 shares of Atlantic Acceptance to you and Mr. Kapp on the terms of the agreement bearing the date of the 10th of June, 1965?

A. The way I understand the question, the way you put it to me, was if they knew exactly the contract.

Q. Well, it is a good place to start,
Mr. Tramiel. Did they know the terms of the
contract?

A. The terms of the contract?

Q. Between yourself and Mr. Kapp and Hugo Oppenheimbank (Canada)?

28 A. I told them when this was signed,
29 to the best of my knowledge, my answer to you
30 is I don't recall showing them the contract after-
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wards when it was signed.

Q. Yes. But, you did tell them the terms on which you were buying these shares for. Is that correct?

A. I believe I did.

Q. And did they know then, let us say by the end of June, that Hugo Oppenheimbank (Canada) Limited had sold 75,000 shares of Atlantic to you and Mr. Kapp?

A. At that time, Mr. Shepherd, I didn't believe it was important any more for them to question it or for me to tell them.

Q. But whether it was important or not, did they know it?

A. I believe they did.

Q. Then, did they know it because presumably you told them on the 11th of June, when you described the terms of the contract, that Hugo Oppenheimbank (Canada) was selling to you and Mr. Kapp 75,000 shares of AtlanticAcceptance?

Is that correct?

A. Yes.

Q. Yes. Then I show you Exhibit
3426, this being an agreement made between
yourself and Hugo Oppenheim German bank, signed
on behalf of yourself, of course, with your own
signature, signed by Mr. Wirth and Mr. Lange,
bearing a date of the 1st of July, 1965. Do you

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recall signing that agreement? That is, the
3 German text, Exhibit 3426.

4

A. Yes.

5

Q. And I show you a translation of
6 that document which forms part of Exhibit 3426,
7 and I would like to direct your attention to
8 one portion of this document in Article 3, section 2,
9 it recites: That the party of the second part,
10 which is the bank, will transfer unto the
11 contracting party of the first part, which is
12 yourself, right and title to the following stocks
13 in the event of an agreement to purchase and
14 sell. Then there is a list of a number of
15 stocks, No.6 being 111,900 only, A.C.C. shares,
16 located at Oppenheimbank (Canada) Limited. Is
17 that correct?

18

19

A. Yes.

20

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Q. Does the German text say sub-
stantially the same thing under No.6?

22

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A. Yes.

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Q. Why do Mr. Wirth and Mr. Lange on
the 1st of July, 1965, enter into an agreement
citing that a hundred and eleven thousand shares
of Atlantic Acceptance Corporation, which I
take to be what is meant by "A.C.C.", 111,900,
are located at the Oppenheimbank (Canada) Limited,
if they well know that 75,000 of those shares
have been sold to you and Mr. Kapp?

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A. Mr. Shepherd, I can only answer
you as far as they were concerned, those shares
were here in Canada, and I just put it that way.
This was ---

Q. I am sorry, I didn't hear the last
part of your answer.

A. They just put it into -- in the
contract that way, because those shares in their
opinion, in my opinion, were the property of
Hugo Oppenheim, they have transferred them to
Hugo Oppenheim instead of making a distinction.
If they were sold to me or they were given to
me on option, they just put it together at one
sum. I didn't see the importance of it. At
that time, my most importance was to be able to
bring those securities back and turn it over
to the Clarkson Company, and to save as much
money as I can, because at that time I found out
I am a trustee for a receiver. How it was
worded personally, I didn't care.

Q. Did it not trouble you then, that
this contract states that these shares are located
at the Oppenheimbank (Canada) Limited, when you
have asserted that Mr. Wirth and Mr. Lange well
knew that they were not located at the Hugo
Oppenheimbank (Canada) Limited, they had been sold
to you?

A. At that time, I did not -- I did not
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THE ROYAL COMMISSION
ON
ATLANTIC ACCEPTANCE CORPORATION LIMITED

1

J. Tramiel

11898

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3

look at this the way you are putting it, Mr. Shepherd. As long as I felt I would have control over those shares and be able to advise the Clarkson Company exactly where they are, to me, was more important than to dicker with the German people, how it is written.

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You will appreciate, Mr. Tramiel, the difficulty one faces in looking at that language without some further explanation. That it is capable of the interpretation that the bank thought that Hugo Oppenheimbank (Canada) Limited, still had possession of the shares, which is contrary to what you have said.

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A. There is no difference for the

German bank who owned it, Mr. Shepherd, because they turned it over to me for the bank stock.

Didn't make any difference to them who owned it.

Q. Well, is that your full explanation

of their statement that these shares are at

the Hugo Oppenheimbank (Canada) Limited?

A. Yes.

Q. Would you look at Article 1,

paragraph 2. I will read the last sentence.

I will read the paragraph in the translation.

Perhaps you would follow it in the German text

of Exhibit 3426:

"The contracting party of the first

"part" --

THE ROYAL COMMISSION
ON
ATLANTIC ACCEPTANCE CORPORATION LIMITED

1 J. Tramiel 11899

2
3 That is yourself, Mr. Tramiel.
4 " -- is a shareholder of the contracting
5 "party of the second part."

6 Which is the bank.
7 "He owns shares in the nominal value
8 "of D.M. 8,127,500 (Eight Million,
9 "One Hundred and Twenty-Seven Thousand,
10 "Five Hundred German Marks). He assures
11 "that these shares are his freely
12 "disposable and unrestricted property,
13 "totally unencumbered by rights in
14 "favour of third parties."

15
16
17
18 (Page 11900 follows)

J. TRAMIEL.

16900

1

2 Is that substantially an accurate trans-
3 lation of the German text?

4 A. Yes, sir.

5 Q. Did you consider that those shares
6 were your freely disposable and unrestricted
7 property, totally unencumbered by rights in
8 favour of third parties?

9 A. Mr. Shepherd, I have made this clear
10 a number of times who the shares belonged to. I
11 have also made it clear just a minute ago, that I
12 went over there to get the security back.

13 Q. Now, if you would take the trouble
14 to make it clear to me why you didn't make it
15 clear to the Hugo Oppenheimbank, that these
16 shares were not your freely disposable and
17 unrestricted property in the light of what you
18 have said here to-day?

19 A. The only reason if I would have at
20 that time, is to sign as an officer of Evermac,
21 I couldn't have completed the transaction.

22 Q. Mr. Tramiel, why go to the trouble
23 in the contract of stating that which is not
24 correct, or which you say is not correct, that
25 these shares are your property?

26 A. Because my interest was -- get
27 these shares back as fast as I can -- because,
28 they were not -- Mr. Morgan at that time had no
29 jurisdiction over them and my job was in my
30 opinion, at that time, to turn them over as fast

THE ROYAL COMMISSION
ON
ATLANTIC ACCEPTANCE CORPORATION LIMITED

J. TRAMIEL

16901

1

2 as I can to the Clarkson Company.

3 Q. Had you given a guarantee to this bank
4 when you first acquired an interest in it about
5 the value of Canadian securities in which the
6 bank would invest?

7 A. No. No, not Canadian securities.
8 I gave it a guarantee.

9 Q. What guarantee had you given it?

10 A. I was asked at one point of the
11 matters -- what I think of the Atlantic stock.

12 Q. Yes?

13 A. I told them I think about it the
14 same way like Canada bonds and if you want my
15 personal guarantee, I will guarantee it.

16 Q. About when did this discussion take
17 place?

18 A. Before they bought the Atlantic
19 shares.

20 Q. Yes, and did you then execute a
21 document extending to Hugo Oppenheim (Berlin)
22 your guarantee of the value of the Atlantic
23 shares?

24 A. I believe I did.

25 Q. You were personally liable, I
26 suppose, on that guarantee, having executed it?

27 A. It could have been, yes.

28 Q. Then, when you returned to Germany
29 and gave up your interest in the shares of
30 Hugo Oppenheim (Berlin) and took back the

THE ROYAL COMMISSION
ON
ATLANTIC ACCEPTANCE CORPORATION LIMITED

11902

1 J. TRAMIEL

2 securities consisting of Atlantic Acceptance
3 shares and Commodore Business Machines securities
4 of the Berlin bank, did you do so so that you
5 would be freed of your personal obligation to
6 the bank to make good on the guarantee?

7 A. Not at all.

8 Q. Were you freed of your personal
9 obligation to the bank to make good on the
10 guarantee? *Office Equipment*

11 A. Yes.

12 Q. Do you say that that was simply
13 a side effect and was not the motive for the
14 transaction?

15 A. That is right.

16 Q. Do you say your motive in the
17 transaction was to get these securities,
18 Commodore Business Machines securities and
19 Atlantic Acceptance shares, back for the benefit
20 of the Clarkson Company?

21 A. Yes, sir.

22 Q. If you had not entered into this
23 transaction, what would have been the extent
24 of your personal liability in dollars to the
25 bank on this personal guarantee, approximately?

26 A. Whatever the deal was. I believe
27 \$2,000,000.

28 MR. SHEPHERD: Yes. You have 989.1, please?

29 Q. I show you Exhibit 989.1, a

30 Declaration of Trust. Indeed, I see it is
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THE ROYAL COMMISSION
ON
ATLANTIC ACCEPTANCE CORPORATION LIMITED

11903

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J. TRAMIEL.

2

three copies of a Declaration of Trust, which I
believe I undertook to show you the last time
you testified. Is that your signature?

5

A. Yes, it is.

6

Q. Is this the document to which you
made reference when you said that you had
executed a Declaration of Trust, saying that
you held the Oppenheim (Berlin) shares in trust
for Evermac Office Equipment Company Limited?

11

A. I believe this is the one, yes.

12

Q. It reads:

13

"IN WITNESS WHEREOF I have hereunto set
my hand and seal this 16th day of
February, 1965."

16

Can you state when that document was signed?

17

A. The date is the 16th of February,
and I believe it was signed on the 16th of
February.

20

Q. Where was it signed?

21

A. In Toronto.

22

Q. But, whereabouts in Toronto? Would
it be at the offices of Solomon & Singer?

24

A. I was trying to say.

25

Q. Sorry.

26

A. Usually they were being prepared
by the solicitors, so they must have been signed
there.

29

Q. Do you recall that that was signed

30

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THE ROYAL COMMISSION
ON
ATLANTIC ACCEPTANCE CORPORATION LIMITED

11904

1 *J. TRAMIEL*

2 A. This is the only place I would sign
3 a document like this.

4 Q. Which solicitor did you deal with
5 at Solomon & Singer?

6 A. With any one which was available,
7 sir.

8 Q. Well, that would be Mr. Solomon and
9 Mr. Singer, of course. Was there anyone else
10 over there with whom you ever dealt?

11 A. Mr. Solway, there was some dealings
12 I had with him. *Page 1000*

13 Q. I see. Why were you so concerned
14 to get these securities back to the Clarkson
15 Company and not concerned with your personal
16 guarantee for \$2,000,000?

17 A. Because I have seen the way the
18 Clarkson Company works as a receiver, and I felt
19 if the receiver would be appointed in the bank
20 it will happen the same thing, that there will
21 be more expenses than assets.

22 Q. Was your concern for the creditors
23 for whom Clarkson were appearing?

24 A. I don't follow you there, sir.

25 Q. I am concerned that you have said
26 you were not motivated by a desire to relieve
27 yourself of a personal liability under the
28 guarantee, but you were motivated by the desire
29 to get these assets, the Canadian securities, back
30 in the hands of the Clarkson Company. For whose
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THE ROYAL COMMISSION
ON
ATLANTIC ACCEPTANCE CORPORATION LIMITED

J. TRAMIEL

11904-A

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benefit were you working at that time?

3

4

A. For the benefit of the receiver
for Atlantic Acceptance.

5

Q. Yes?

6

7

8

9

10

A. I am saying receiver, I am saying
the Clarkson Company, because at that time, I
believe the Clarkson Company was representing
Atlantic Acceptance and all other companies too.
Aurora and everybody else.

11

12

(Page 11904-B follows)

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THE ROYAL COMMISSION
ON
ATLANTIC ACCEPTANCE CORPORATION LIMITED

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J. Tramiel

11904-B

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Q. If you made good on your personal guarantee which you have mentioned, fixed at \$2 million, to the bank, and if those shares were in fact owned by Evermac, which in turn owed \$2 million to Aurora, would that not have benefitted the receiver and the creditors more clearly than did the exchange of shares for assets?

A. But, Mr. Shepherd, you are saying -- I didn't have \$2 million, because the way you are putting the question to me -- I didn't have \$2 million, so I couldn't pay it.

Q. But probably you could have paid some part of it, Mr. Tramiel?

A. At that time, I couldn't pay anything, because whatever I had was lost.

Q. You now have, do you not -- perhaps you could answer this yes or no - a substantial interest in Commodore Business Machines (Canada) Limited, or at all events, a right to acquire a substantial interest in Commodore Business Machines?

A. Well, there is a big difference in the question the way you put it. If you ask me - if I have an interest in Commodore Business Machines - I have a very small interest.

Q. Well, Mr. Tramiel, I don't

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THE ROYAL COMMISSION
ON
ATLANTIC ACCEPTANCE CORPORATION LIMITED

J. Tramiel

11904-C

1
2 events following the collapse of the Atlantic,
3
4 but I am prepared to do so if need be, subject
5 to the Commissioner's direction.
6

(Page 11905 follows)

THE ROYAL COMMISSION
ON
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BB/FTP/1

J. Tramiel

11905

1
2 Do you agree that notwithstanding the
3 collapse of Atlantic Acceptance Corporation you
4 have shares of Commodore Business Machines
5 (Canada) Limited and also a right to acquire
6 substantial numbers of shares of Commodore
7 Business Machines (Canada) Limited, and that
8 you have not been ruined as I thought you were
9 perhaps suggesting before?

10 A. On June 14th or 17th, the day
11 when I have signed this document, I did not have
12 any options, and I held a very small amount of
13 shares, which I call less than 1,000 Commodore
14 shares.

15 In September some time, or October, I did
16 receive an option to buy a substantial amount of
17 Commodore shares, and I do have this option
18 to-day.

19 Q. Did you, at a meeting of the
20 directors of Commodore Business Machines on or
21 about 5th July, 1965, after the collapse of
22 Atlantic, have approved a contract of employment
23 by Commodore Business Machines with yourself,
24 whereby that company was obliged, for a period
25 of five years, to pay you \$30,000 per year?

26 A. I had a contract of employment, I
27 believe, before for \$25,000. This was an
28 increase of \$5,000 a year.

29 Q. Was the contract of employment prior

30 to this time in the minute book?
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THE ROYAL COMMISSION
ON
ATLANTIC ACCEPTANCE CORPORATION LIMITED

J. Tramiel

11906

1

2 A. I believe it was.

3 Q. Why did you enter into a new contract
4 for a new period of five years, three weeks after
5 the collapse of Atlantic?

6 A. Because I asked the board of directors,
7 and I needed money and I was in trouble.

8 Q. And at the same meeting, did the
9 board authorize an employment contract with
10 Mr. Kapp for five years for \$25,000 a year?

11 A. I believe they did, and also for
12 some other employees of ours, of the company.

13 Q. But you have not in the minutes?

14 A. I am sorry, this is subsidiaries,
15 I am sorry.

16 Q. Prior to the collapse of Atlantic,
17 apart from the salary you drew from Commodore
18 Business Machines (Canada) Limited, did you
19 draw a salary from Commodore Business Machines
20 Incorporated?

21 A. No, I did not.

22 Q. At any time?

23 A. I moved on May 18th -- I am sorry,
24 March 18th, 1965, to Canada.

25 Q. Yes?

26 A. I am not sure of the exact date.

27 When I was living in the United States, my pay
28 came from Commodore Business Machines Incorporated
29 or Inc.

30 Q. Yes?

THE ROYAL COMMISSION
ON
ATLANTIC ACCEPTANCE CORPORATION LIMITED

J. Tramiel

11907

1

2 A. My pay at that time was \$25,000
3 U.S. money.

4 Q. Yes?

5 A. When I came here and my pay came
6 from the Canadian Corporation, was \$25,000
7 Canadian, which was less than the amount that
8 I am receiving in the United States, but I did
9 not check into it. After the collapse, because
10 I had quite a number of loans to pay back, I
11 have asked for this increase. The increase
12 was only -- not \$5,000 because my pay was
13 really \$27,000 something.

14 Q. Do you say that in the aggregate
15 from all companies in the Commodore Business
16 Machines group, your pay prior to 18th March,
17 let us say prior to 1st March, 1965, was
18 \$25,000 U.S.?

19 A. Yes, sir.

20 Q. And do you say that you had an
21 employment contract with Commodore Business
22 Machines (Canada) Limited?

23 A. I believe so.

24 Q. For what term?

25 A. I believe it was five years.

26 Q. Starting when?

27 A. I believe it started in 1963.

28 Q. How would you have an employment
29 contract with Commodore Business Machines (Canada)

30 Limited if you were paid by the American Company?
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THE ROYAL COMMISSION
ON
ATLANTIC ACCEPTANCE CORPORATION LIMITED

J. Tramiel

11908

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2 A. Because I was president of the parent
3 company and who paid me, and I worked in United
4 States; so if I would be transferred to-day into
5 another country I would get paid there, because
6 I was performing the services for that particular
7 company.

8 Q. Then you say there really was no
9 difference in your contractual arrangements, other
10 than that you had been paid \$25,000 American
11 dollars and you simply wanted to get a like sum
12 once you moved to Canada?

13 A. No, I asked for an increase.

14 Q. And this is 5th July, 1965, is it not?
15 You nodded "yes"?

16 A. I believe that date is correct.

17 HIS LORDSHIP: We will take fifteen minutes.

18 ---A short recess.
19

20 MR. SHEPHERD: Q. Mr. Tramiel, you have
21 stated in evidence that you and Mr. Kapp pledged
22 with Traders Realty Limited in connection with the
23 loan made to finance the purchase of Wilson
24 Stationers 75,000 common shares of Atlantic
25 Acceptance Corporation Limited.

26 I show you a photocopy of Certificate No.
27 C7057 for 75,000 shares of Atlantic Acceptance
28 Corporation Limited, registered in the name of
29 Hugo Oppenheimbank (Canada) Limited, bearing date
30 the 14th June, 1965, to which is affixed an
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THE ROYAL COMMISSION
ON
ATLANTIC ACCEPTANCE CORPORATION LIMITED

J. Tramiel

11909

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2 assignment and transfer form reciting that Hugo
3 Oppenheimbank (Canada) Limited has transferred
4 these 75,000 shares of Atlantic Acceptance
5 Corporation Limited to an assignee, the space
6 being left blank, and signed on behalf of
7 Hugo Oppenheimbank (Canada) Limited by yourself
8 and Mr. F.S. Draper, the secretary of that
9 company; further containing and setting out
10 what I take to be a guarantee of signature by
11 the Bank of Nova Scotia, per an assistant
12 manager whose signature I cannot decipher.

13

14 Is that an accurate copy of the share
15 certificate pledged by yourself and Mr. Kapp
16 with Traders Realty Limited in connection
with this matter?

17

A. Yes, sir.

18

19 Q. And is it correct that you have
20 the original share certificate which you brought
down, and this is a photocopy of that original?

21

A. Yes, sir.

22

23 MR. SHEPHERD: I offer this in evidence,
Mr. Commissioner.

24

25 THE COMMISSIONER: That will be Exhibit
3639.

26

27 ---EXHIBIT NO. 3639: Photocopy of share certificate
28 No. C7057 for 75,000 shares
of Atlantic Acceptance with
assignment attached.

29

30

MR. SHEPHERD: Q. Is there any other
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THE ROYAL COMMISSION
ON
ATLANTIC ACCEPTANCE CORPORATION LIMITED

J. Tramiel

11910

1

2 transaction with which you would like me to deal,
3 or is there any matter you would like to raise
4 which we could discuss together?

5 A. No, sir.

6 MR. SHEPHERD: I think, Mr. Commissioner,
7 subject to some unforeseen circumstances whereby
8 Mr. Tramiel might be recalled, that that is all
9 I have to ask him at this time.

10 THE COMMISSIONER: Thank you, Mr. Tramiel.

11 A. Thank you.

12 THE COMMISSIONER: Mr. Pomerant.

13 ---The witness retired.
14

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THE COMMISSIONER: Mr. Kapp.

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THE ROYAL COMMISSION
ON
ATLANTIC ACCEPTANCE CORPORATION LIMITED

1 M. Kapp

11911

2

MANFRED KAPP, sworn.

3

4 THE COMMISSIONER: You appear for Mr. Kapp
also, Mr. Pomerant?

5

6 MR. POMERANT: I do, Mr. Commissioner.

7

THE COMMISSIONER: Thank you.

8

EXAMINATION BY MR. SHEPHERD:

9

10 Q. What is your full name, Mr. Kapp?

11

A. My name is Manfred Kapp.

12

Q. K-a-p-p?

13

A. Yes, sir.

14

Q. When and where were you born?

15

A. I was born in Germany, December 17,
1928.

16

Q. Where did you live thereafter?

17

A. I lived in Germany until 1933, and
then I moved to France. In 1947 I moved to the
United States.

20

Q. In what place in Germany were you
born?

22

A. Luneburg.

23

THE COMMISSIONER: Where?

24

A. Luneburg.

25

MR. SHEPHERD: Q. What education have you,
Mr. Kapp?

28

A. I have public school and junior high
school.

29

Q. What is your citizenship now?

30

THE ROYAL COMMISSION
ON
ATLANTIC ACCEPTANCE CORPORATION LIMITED

M. Kapp

11912

1

2 you A. to United States.

3 Q. When you emigrated to the United
4 States in 1947, what did you do?

5 A. I went to work.

6 A. Q. Where?

7 A. A typewriter place.

8 Q. What company was it?

9 A. Typewriter company called Fisher
10 Typewriter Company.

11 Q. And what was the nature of your
12 duties? Were you a repairman?

13 A. Typewriter repair man.

14 Q. What was your business career,
15 employment career thereafter?

16 A. I worked for this company for about
17 a week, and then I went to work for ACE Typewriter
18 Repair Company. I worked there until 1950.

19 Q. Yes?

20 A. I was in the U.S. Army for about two
21 years, and I went back to work for ACE Typewriter.

22 Q. During your service in the American
23 Army, were you again engaged in the field of
24 typewriter repair?

25 A. No, sir, I was not. I was in the
26 ordnance field.

27 Q. When did you first meet Mr. Tramiel?

28 A. I believe it was about 1951 when I
29 was in furlough in New York.

THE ROYAL COMMISSION
ON
ATLANTIC ACCEPTANCE CORPORATION LIMITED

M. Kapp

11913

1

2 you came to meet him?

3 A. I believe he was working for ACE
4 Typewriter at that time.

5 Q. Then on your discharge from the
6 Army, did you return to work for ACE Typewriter
7 Company? *(Is it accepted that Mr. Kapp has*

8 A. Yes, sir. object to answer.

9 Q. How long did you remain then?

10 A. Until 1954. *(to inquire)*

11 Q. What did you do then?

12 A. Then I went into business with Mr.
13 Tramiel, partnership. *(prosecution under)*

14 Q. Is this the business -- Mr. Tramiel
15 told us about a retail store called Singer
16 Typewriter, selling reconditioned typewriters.

17 MR. POMERANT: Mr. Commissioner, Mr. Kapp
18 has instructed me that he objects to answer this
19 question on the ground that his answer might
20 tend to incriminate him or may tend to establish
21 his liability to a civil proceeding at the
22 instance of the Crown or of any person, or to
23 prosecution under any Act of a Provincial
24 Legislature. *(Commissioner)*

25 Mr. Kapp invokes Section 5 of The Canada
26 Evidence Act, Section 9 of The Ontario Evidence
27 Act, and any other relevant sections of any other
28 Provincial Acts of evidence.

BB/2

29 So as not to interfere with the examina-
30 tion of Mr. Kapp and because all the questions
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THE ROYAL COMMISSION
ON
ATLANTIC ACCEPTANCE CORPORATION LIMITED

M. Kapp

11914

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2 at this examination would require answers by Mr.
3 Kapp that might incriminate him or tend to
4 establish his liability to a civil proceeding
5 at the instance of the Crown or of any person
6 or to prosecution under any Act of the Provincial
7 Legislature, may it be accepted that Mr. Kapp
8 objects and is deemed to object to answer every
9 question at this examination, on the ground
10 that his answers may tend to incriminate him or
11 tend to establish his liability to civil
12 proceeding at the instance of the Crown or of
13 any person, or to prosecution under any Act
14 of the Legislature, and that Mr. Kapp is deemed
15 to claim the protection of Section 5 of The
16 Canada Evidence Act, Section 9 of The Ontario
17 Evidence Act and any other relevant Provincial
18 Acts of evidence; and may it be admitted, Mr.
19 Commissioner, that by the use of the word
20 "examination" at this stage, that this would
21 refer to every question asked at any stage
22 where Mr. Kapp would be required to give evidence
23 before you, sir?

24

THE COMMISSIONER: Yes, it may, Mr.
Pomerant, and pursuant to the provisions of
those sections the witness is directed to
answer them.

28

I think the last question that was put
to you by counsel was whether this partnership
business with Mr. Tramiel was known as Singer

THE ROYAL COMMISSION
ON
ATLANTIC ACCEPTANCE CORPORATION LIMITED

M. Kapp

11915

1

2 Typewriter Company.

3 A. Yes, sir, it was.

4 MR. SHEPHERD: Q. Were you present in
5 the hearing room in this Commission, Mr. Kapp,
6 when Mr. Tramiel gave evidence relating to the
7 early days of your association, in the course
8 of which he mentioned the incorporation of a
9 company called Everest Office Machines (Canada)
10 Limited and other like matters?

11 A. Yes, sir, I was.

12 Q. And can you state whether you have
13 anything to add or to alter in connection with
14 Mr. Tramiel's description of the history of
15 your partnership and joint business ventures
16 up to but not including the time when you
17 incorporated Commodore Portable Typewriter Company
18 Limited?

19 A. No, I have nothing special to add.

20 Q. When did you come to Canada yourself,
21 to live I mean?

22 A. 1956.

23 Q. And what were the circumstances
24 which compelled you to move?

25 A. Well, Mr. Tramiel had come to
26 Canada in 1955 and had started the company as
27 he has described.

28 Q. That is Everest?

29 A. Everest, yes.

30 Q. Yes?

THE ROYAL COMMISSION
ON
ATLANTIC ACCEPTANCE CORPORATION LIMITED

1 M. Kapp

11916

2 A. And I was still working in New
3 York taking care of Singer Typewriter, and in
4 1956 decided to sell Singer Typewriter and I
5 moved to Canada.

6 Q. Did you thereafter concern yourself
7 with the operations of Everest Office Machines and
8 the other company to which Mr. Tramiel made
9 reference, which I think was Wholesale Distributors?

10 A. Wholesale Typewriter Company.

11 Q. Is it possible to state in general
12 terms how you and Mr. Tramiel divided the work
13 required to be done in your various common
14 ventures?

15 A. Well, essentially Mr. Tramiel was
16 doing the selling, seeing customers, and I was
17 essentially taking care of the internal operation,
18 bookkeeping, work inside, even though there was
19 a certain overlapping of functions.

20 Q. Have you had any formal training as
21 an accountant?

22 A. No, sir, I didn't.

23 Q. I am sure that you must have had a
24 good deal of practical experience. Could you
25 describe in a general way how it was that you
26 came to be skilled in this field?

27 A. Well, I acquired some practical
28 experience in the Army when I worked in ordnance.
29 I was connected, working in the office mainly.

THE ROYAL COMMISSION
ON
ATLANTIC ACCEPTANCE CORPORATION LIMITED

M. Kapp

11917

1

2 experience.

3 Q. Under what circumstances did
4 Commodore Portable Typewriter Company Limited
5 come to be formed? Perhaps I could remind you
6 that Mr. Tramiel testified that you, or perhaps
7 Mr. Tramiel, had made a connection with a
8 supplier of new typewriter machines in
9 Czechoslovakia, and these machines were dealt
10 in by you thereafter? ~~by a distributor~~

11 A. Yes, that is correct.

12 Q. Now, with that background, could
13 you describe the reason for incorporating
14 Commodore Portable Typewriters?

15 A. Well, if I recall, it was at the
16 time when we had some difficulty with the people
17 in New York.

18 Q. Is that Type Sales?

19 A. Type Sales, yes, sir, and if I
20 recall, they didn't want to come into the
21 distribution of this new portable typewriter
22 and expand on it, and they were primarily
23 interested in the used machines because they
24 had that contract with IBM in the States and
25 this is what they wanted to pursue and do.

26 Q. At that time Type Sales had an
27 interest, did it not, in Everest Office Machines?

28 A. Yes, it did.

29 Q. Did Everest Office Machines (later
30 Evermac) encounter financial difficulties at
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THE ROYAL COMMISSION
ON
ATLANTIC ACCEPTANCE CORPORATION LIMITED

M. Kapp

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2 about this time?

3 A. Yes, it did.

4 Q. And ultimately did the company
5 become dormant?

6 A. It did become dormant.

7 Q. The evidence before the Commission
8 has been to the effect that Commodore Portable
9 Typewriters was incorporated on 10th October,
10 1958, but, as appeared by a financial statement
11 which I put to Mr. Tramiel during your presence
12 in the hearing room, there was some reason to
13 think that the company did not go into the
14 business of selling until February, 1959. Can
15 you assist us as to when Commodore Portable
16 Typewriters commenced operations?

17 A. Well, my recollection is also a
18 little bit vague. I must rely on the statement
19 that you have submitted, that the company
20 probably only went in actively in 1959.

21 THE COMMISSIONER: I am having a little
22 difficulty in hearing you, Mr. Kapp. If you
23 will just keep your voice up.

24 A. Yes.

25 Q. It would be easier.

26 A. Yes, sir.

27 MR. SHEPHERD: Q. Would you describe the
28 circumstances which led to your first meeting
29 with Mr. Morgan? Perhaps you could begin with
30 the first contact you had with Mr. Annett.
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M. Kapp

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2 A. Well, the first time I have met
3 Mr. Morgan was when he came to our office with
4 a Mr. Rooney. I believe it is A.C. Rooney.

5 Q. Mr. Tramiel testified that through
6 the agency of one Hall, he (Mr. Tramiel) met
7 Mr. Annett, Mr. Douglas Annett, seeking a source
8 from which Commodore Portable Typewriters might
9 be able to borrow money; because Interprovincial
10 Discount which had been the company financing
11 Everest (later Evermac) was not able to give to
12 Commodore Portable Typewriters financing to the
13 extent that Mr. Tramiel envisaged Commodore
14 Portable Typewriters would require. Did you
15 have any part in the discussions with Mr. Annett?

16 A. No, I didn't have any part in the
17 discussions.

18 Q. Then when Mr. Morgan came to
19 Commodore Portable Typewriters with Mr. Rooney,
20 what occurred on that occasion?

21 A. Well, the two gentlemen wanted to
22 know about the company, what we were doing, how
23 we were financing, took a quick look at the books
24 and probably stayed there for maybe a couple of
25 hours asking questions about the business.

26 Q. I suppose you had already learned
27 from Mr. Tramiel that there was a possibility
28 that such a visit might be made, because Mr.
29 Morgan had indicated some interest in the
30 financing?

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ON
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M. Kapp

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2 A. Yes, I was aware of the discussions
3 and I knew ---

4 Q. I am sorry, Mr. Kapp, I did not
5 hear you.

6 A. I was aware of the discussions, and
7 I knew that Mr. Morgan was coming over.

8 Q. Then what is the next occasion on
9 which you met Mr. Morgan?

10 A. I think the next occasion I met him
11 is at the time of the meeting at the Bank of
12 Nova Scotia that Mr. Tramiel referred to.

13 Q. When did you first learn that there
14 was a company to be formed which became known
15 as Commodore Sales Acceptance, and that a 25
16 per cent interest in that company would be made
17 available to be purchased by Commodore Portable
18 Typewriters or by such persons as Commodore
19 Portable Typewriters might designate?

20 A. This must be some time after Mr.
21 Morgan visited at our office.

22

23

24

(Page 11925 follows)

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27

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THE ROYAL COMMISSION
ON
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1 M. Kapp 11925

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2 Q. I take it, then, you did learn
3 it from Mr. Tramiel; is that correct?

4 A. Yes.

5 Q. Was the meeting at the Bank
6 of Nova Scotia the occasion on which you
7 first met Mr. Annett?

8 A. Oh, no, I had met Mr. Annett
9 before.

10 Q. Under what circumstances had
11 you met him? Yes,

12 A. I had been up there with
13 Mr. Tramiel on some occasions.

14 Q. In connection with the
15 discussions which Mr. Tramiel described
16 leading to a source of funds?

17 A. That is correct.

18 Q. And what had Mr. Annett said
19 as to the possibility of funds being found?

20 A. Well, in these discussions
21 Annett wanted to know about the company,
22 just general discussion, see what could be
23 done for the company.

24 Q. Yes. When did you first
25 learn that Commodore Portable Typewriters
26 was to be allowed to participate to the
27 extent of 25 per cent?

28 A. As best I told you some time
29 after Mr. Morgan had been there in discussions

THE ROYAL COMMISSION
ON
ATLANTIC ACCEPTANCE CORPORATION LIMITED

1 M. Kapp 11926

2 with Mr. Tramiel.

3 Q. Commodore Portable Typewriters,
4 according to the evidence we have heard,
5 purchased a note of Commodore Sales
6 Acceptance for \$25,000, and borrowed the
7 money to enable this to be done from
8 Commodore Sales Acceptance; is that in
9 accordance with your recollection of what
10 happened? And the security?

11 A. Yes, sir, it is.

12 Q. Did you consider that an unusual
13 transaction?

14 A. Well, it is unusual. At the
15 time I understood we didn't have the money,
16 but I understand what these people would want
17 to loan us the money to take part in the
18 company, and I didn't question it.

19 Q. The nature of the transaction,
20 Mr. Kapp, you will appreciate that Commodore
21 Sales was lending \$25,000 to Commodore Portable
22 Typewriters so Commodore Portable Typewriters
23 made the loan of \$25,000 to Commodore Sales
24 Acceptance. Do you consider that unusual?

25 A. Well, we did give security to
26 Commodore Sales Acceptance, and I think there
27 was two distinct transactions. Commodore
28 Sales Acceptance went into the business of
29 lending money, and we give them security

THE ROYAL COMMISSION
ON
ATLANTIC ACCEPTANCE CORPORATION LIMITED

1 M. Kapp 11927

2 and we received money from them.

3 Q. In the form of assigning your
4 receivables, and the like; is that correct?

5 A. Yes.

6 Q. And they loaned money against
7 your receivables, that was the general
8 purpose of the transaction, was it not?

9 A. Yes.

10 Q. And the security for this
11 particular \$25,000 loan, for the purpose of
12 enabling the money to be loaned back again
13 was their note of Commodore Sales Acceptance
14 itself, was it not?

15 A. Could you ask that question
16 again?

17 Q. When Commodore Portable
18 Typewriters borrowed \$25,000 from Commodore
19 Sales Acceptance and then paid the money back
20 to Commodore Sales Acceptance it obtained,
21 I put it to you, a note of Commodore Sales
22 Acceptance?

23 A. Yes.

24 Q. And that note was a security
25 for that particular loan?

26 A. Not to my recollection, sir.

27 Q. What security did you consider
28 Commodore Sales Acceptance had for that
29 advance?

THE ROYAL COMMISSION
ON
ATLANTIC ACCEPTANCE CORPORATION LIMITED

1 M. Kapp 11928

2 A. Well, for the advance of
3 \$65,000 we received at that particular time,
4 we have given Commodore Sales Acceptance
5 a security of receivable, of inventory, and
6 the note had nothing to do with the loan.

7 Q. Then, Mr. Kapp, Commodore
8 Portable Typewriters got possession of the
9 note?

10 A. I don't recall they would. It
11 is possible we did, maybe not.

12 Q. I think Mr. Tramiel testified
13 according to his recollection you didn't get
14 the note, it remained over with Annetts or at
15 Commodore Sales Acceptance. In any event,
16 you didn't have it? 1,000

17 A. No, it is possible. Of course,
18 I have to state here I don't particularly
19 recollect the whole transaction. The only
20 reason I am able to answer you I did look it
21 up in the books of the company to refresh
22 my memory, but I don't recall all the exact
23 details.

24 Q. Now, everyone who advanced moneys
25 to Commodore Sales Acceptance was given, were
26 they not, the right to subscribe for shares
27 of Commodore Sales Acceptance in proportion
28 to the amount of money they had loaned?

29 A. That is right.

THE ROYAL COMMISSION
ON
ATLANTIC ACCEPTANCE CORPORATION LIMITED

1 M. Kapp 11929

2 Q. And since Commodore Portable
3 Typewriters had advanced 25 per cent,
4 Commodore Portable Typewriters was entitled
5 to subscribe, was it not, for 1,000 shares
6 at 10 cents per share, which was 25 per cent
7 of the issued capital at that time?

8 A. Well, I can't answer you as to
9 the amount of shares, I can answer you as
10 to the percentages. It was my understanding
11 we could subscribe to the percentage of
12 loan advances, which at that time my
13 understanding is was 25 per cent.

14 Q. Will you take it from me, for
15 the facilitating of this examination, it was
16 1,000 shares out of 4,000 shares?

17 A. Yes.

18 Q. Those shares, according to the
19 evidence we have heard, were held in the
20 name of Annett and Company originally for the
21 account of Mrs. Kapp and Mrs. Tramiel; does
22 that agree with your recollection?

23 A. That is correct.

24 Q. Why did Annetts retain the shares?

25 A. Well, I couldn't answer you,
26 Mr. Shepherd. I know the transaction was
27 done through them at the time when we
28 started to deal, and knowing the type of
29 people we were dealing with we had full

30

THE ROYAL COMMISSION
ON
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1 M. Kapp 11930

2 confidence in them, and we left the
3 transaction entirely to Mr. Morgan and
4 Mr. Annett. Not offhand.

5 Q. In my suggestion, Mr. Kapp, when this
6 transaction was being entered into Mr. Morgan
7 must have said something about why Commodore
8 Portable Typewriters was being allowed on
9 these terms to take a 25 per cent interest?
10 Did he say anything, and can you tell us what
11 he said? 959, and not

12 or 1960 A. No, he didn't say anything to
13 me, because I didn't have any discussions with
14 him. 107

15 Q. Other than the meeting at the
16 Bank of Nova Scotia, when was the next time
17 you saw Mr. Morgan?

18 that Mr. Morgan After the Bank of Nova Scotia
19 meeting I have seen Mr. Morgan numerous times
20 during the years, and I couldn't tell you
21 exactly --- part 107

22 Q. Mr. Wagman testified shortly
23 after the meeting at the Bank of Nova Scotia --
24 although I do not recall he said the number
25 of days or hours -- there was a meeting in
26 Mr. Morgan's office attended by yourself,
27 Mr. Tramiel, Mr. Wagman and Mr. Morgan, at
28 which was discussed the role which Commodore
29 Sales Acceptance was to play in the affairs of

THE ROYAL COMMISSION
ON
ATLANTIC ACCEPTANCE CORPORATION LIMITED

1 M. Kapp 11931

2 Commodore Portable Typewriters; do you recall
3 such a meeting?

4 ~~recollect~~ A. Not offhand I specifically
5 recall this meeting.

6 ~~he was~~ Q. When did you first hear from
7 anyone that it was intended that the shares
8 of Commodore Sales Acceptance were to be
9 re-purchased? To assist you, Mr. Tramiel gave
10 evidence that some time not earlier than the
11 end of 1959, and not later than about March
12 of 1960, Mr. Morgan made some comment about
13 the purchase of these shares at a price of
14 \$6.00? Q.

15 A. Well, again, I am not too clear
16 in that particular period of time. I know
17 he called Mr. Tramiel sometimes telling him
18 that Mr. Morgan was re-purchasing the shares
19 and the note because they wanted to increase
20 the capitalization in Commodore Sales, and
21 we couldn't participate. I don't recollect
22 the exact time.

23 Q. The transaction actually occurred,
24 Mr. Kapp, in connection with which deliveries
25 took place to Netherlands Overseas Securities
26 in the month of February, 1961. Can you
27 assist us as to whether it was about that time
28 or substantially before that time that you
29 first were informed that Mr. Morgan was

THE ROYAL COMMISSION
ON
ATLANTIC ACCEPTANCE CORPORATION LIMITED

1 M. Kapp 11932

2 buying the shares and note?

3 A. It was substantially, to my
4 recollect, before that time.

5 Q. Was it your understanding that
6 he was saying that he would some time in
7 the future buy the note and the shares, or
8 was it your understanding that he was
9 indicating that he bought them right then
10 and there, let us say within early 1960, but
11 that payment might be deferred?

12 A. You have to remember we didn't
13 have the shares in our hands.

14 Q. Yes?

15 A. I was told that he is buying
16 them, and that was it. And the transaction
17 came through actually substantially later. I
18 think I was informed at the time by Mr. Wagman
19 of the exact details of what took place.

20 Q. Are you able to recollect,
21 whether it is substantially in agreement with
22 Mr. Tramiel's, it was early in 1960 that
23 Mr. Morgan indicated that he was buying shares
24 of \$6.00?

25 A. It could have been about that
26 time. I know it was substantially, because it
27 took quite a while for the transaction to take
28 place.

29 Q. Were you afforded at Commodore

THE ROYAL COMMISSION
ON
ATLANTIC ACCEPTANCE CORPORATION LIMITED

1 M. Kapp 11933

2 Portable Typewriters an opportunity from
3 time to time to subscribe for further shares
4 of Commodore Sales Acceptance in return for
5 lending additional moneys to that company?

6 A. Not to my knowledge.

7 surrend~~ed~~ing. Would it be fair to say Commodore
8 Portable Typewriters would not at that point
9 have been able to avail itself of such an
10 opportunity in that it did not then have
11 moneys for the purpose of buying the notes of
12 Commodore Sales Acceptance?

13 Mr. Kapp. A. of ~~I~~ That is correct.

14 the share~~s~~ and Then, state, if you will, everything
15 you can tell the Commission about the way in
16 which the transaction relating to the purchase
17 of the notes and shares of Commodore Sales
18 Acceptance was ultimately done?

19 end up A. You are interested in the sale.

20 As I recall, the transaction -- of course,
21 I verified this in the books of Commodore
22 Portable Typewriter to refresh my memory at
23 the dates -- took place on February 17, 1961.

24 Q. ~~end up~~ Yes?

25 A. Where we were credited firstly
26 \$25,000 into -- that Commodore Sales Acceptance,
27 into our loan account, that is Commodore
28 Portable Typewriter loan account for \$25,000
29 in consideration for the notes.

THE ROYAL COMMISSION
ON
ATLANTIC ACCEPTANCE CORPORATION LIMITED

1 M. Kapp 11934

2 Q. The surrender of the \$25,000
3 note? Is that correct?

4 A. The \$25,000 note.

5 Q. Yes?

6 A. And a further \$25,000 for the
7 surrendering of the shares. And my
8 understanding is Mr. Morgan paid in the
9 \$25,000 for the shares, and I was then told
10 that the note was taken up by Netherlands
11 Overseas Corporation.

12 Q. Who told you at that time,
13 Mr. Kapp, of Mr. Morgan paying the money for
14 the shares and Netherland Overseas taking
15 the note? Kapp

16 A. Well, at that time I would have
17 been told by Mr. Wagman, because this type of
18 transaction after it was accomplished would
19 wind up in the hands of Mr. Wagman in Commodore
20 Sales.

21 Q. So, you say Mr. Wagman told you
22 that the note of Commodore Sales Acceptance
23 owing to Commodore Portable Typewriters was
24 being acquired by Netherlands Overseas; is that
25 correct?

26 A. That is correct.

27 Q. And the shares were being paid
28 for by Mr. Morgan, and that Commodore Portable
29 Typewriters would get a credit from Commodore

THE ROYAL COMMISSION
ON
ATLANTIC ACCEPTANCE CORPORATION LIMITED

1 M. Kapp 11935

2 Sales of \$25,000 in consideration of delivering
3 up shares; is that correct?

4 A. That is correct.

5 Q. Did you understand that
6 Netherlands Overseas was concerned with the
7 shares as well, or did you understand only
8 that they were concerned with the note?

9 A. Well, I understood they were
10 only concerned with the notes, because that
11 is what is reflected in our books, and would
12 be put in the books at the time what my
13 understanding was of the transaction.

14 Q. What evidence did you require to
15 show, Mr. Kapp, that Commodore Sales Acceptance
16 had in fact credited Commodore Portable
17 Typewriters with \$50,000?

18 A. I didn't see -- or I didn't
19 believe I required that evidence because Mr.
20 Wagman told me they have credited us with this
21 amount, and this was sufficient for me. And
22 the entries accordingly were made in the books
23 of Commodore Portable Typewriter, and the accounts
24 were adjusted accordingly.

25 Q. Did Commodore Portable Typewriters
26 write to Commodore Sales Acceptance setting out
27 this arrangement and calling to the attention
28 of Commodore Sales Acceptance that Commodore
29 Portable Typewriters was reflecting in its books

THE ROYAL COMMISSION
ON
ATLANTIC ACCEPTANCE CORPORATION LIMITED

M. Kapp

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2 a reduction of the loan made by Commodore
3 Sales Acceptance to Commodore Portable
4 Typewriters in the amount of \$50,000?

5 A. ~~account~~ We didn't, we didn't write a
6 letter. If I may add here, Mr. Shepherd,
7 I have taken the opportunity to look in
8 Commodore Sales Acceptance book, which is
9 Exhibit No. 954.

10 Q. Yes?

11 Overseas A. In cash receipt No. 118,
12 February 17, 1961, and they record a receipt
13 from C.P. Morgan for \$25,000, crediting the
14 special account C.P.T., which I take it would
15 be Commodore Portable Typewriters.

16 Q. Yes?

17 A. On the same date, February 17,
18
19 1961, received from Commodore Portable credit
20 to special account \$24,992.50, which is, of
21 course, what is reflected in our books. I also
22 understand, and since I have been informed by
23 Mr. Draper, that there is a cheque for
24 \$25,000 in existence from Netherlands Overseas
25 to Commodore Portable Typewriter which I have
never seen.

26 Q. Perhaps I could ---

27 A. But I presume it must have come
28 to Commodore Sales Acceptance, and that they --
29 at that time there was a collateral deposit

THE ROYAL COMMISSION
ON
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1 M. Kapp 11937

2 account in existence, and they have probably
3 deposited to the account and the money
4 automatically went into their account, which
5 would account for why I have never seen the
6 cheque.^{1d take}

7 customer Q. I can undertake to show you the
8 cheque, Mr. Kapp, although I don't have it
9 immediately in front of me. But I put it to
10 you, the cheque in question is from Netherlands
11 Overseas payable to Commodore Portable
12 Typewriters in the amount you have described,
13 that is, being a few dollars less than
14 \$25,000 —

15 final A. If I can interrupt you,
16 \$7.50 was indicated in the books as some
17 transfer tax. That is the discrepancy of
18 the seven fifty.

19 1961 Q. And that is endorsed as being
20 deposited to the account of Commodore Portable
21 Typewriters at the Bank of Nova Scotia?

22 A. Yes.

23 Q. Now, you say the receipt of that
24 cheque is in the books of Commodore Portable
25 Typewriters?

26 A. No, I said, Mr. Shepherd, we were
27 informed by Commodore Sales, and I presume
28 Mr. Wagman, that they had received this money
29 from Netherlands Overseas. I also said that

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ON
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M. Kapp 11938

2 Commodore Sales Acceptance had what we referred
3 to as a collateral account in the name of
4 Commodore Portable Typewriter. When we
5 borrowed money from Commodore Sales Acceptance
6 we would take all receivables. When the
7 customers cheques came in we would turn them
8 over to Commodore Sales Acceptance,
9 and they would deposit it in Commodore
10 Portable collateral account. And this
11 money was automatically transferred to
12 Commodore Sales. I had no control over that
13 account, and no knowledge of actually what was
14 going on. We were only informed of the
15 final figures.

16 Q. I found the cheque I was
17 searching for. I show you a cheque drawn on
18 the Royal Bank of Canada, dated 17 February,
19 1961, payable to Commodore Portable Typewriter
20 Limited, in the amount of \$24,992.50, signed
21 by Netherlands Overseas Corporation Canada
22 Limited, with two signatures, one being Shemelt.
23 I cannot make out the other signature; and
24 endorsed on the back "For deposit only for
25 credit of Commodore Portable Typewriter Company
26 Limited." Is that the cheque to which you
27 have referred?

28 A. This is the cheque. I have
29 never seen the cheque. The reason Mr. Draper

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ON
ATLANTIC ACCEPTANCE CORPORATION LIMITED

1 M. Kapp 11939

2 knows of its existence he was shown this
3 cheque last week by ---

4 at Q. Mr. Wolfman?

5 Commodore A. Somebody from the Commission.
6 I know it went into the collateral account
7 because this particular stamp, the endorsement
8 is the stamp that Commodore Sales had. The
9 stamp Commodore Portable Typewriter uses is
10 completely different. I would be glad to
11 show you the stamp.

12 on this MR. SHEPHERD: I offer this cheque
13 in evidence, Mr. Commissioner.

14 THE COMMISSIONER: 3640.

15 ---EXHIBIT

16 ---EXHIBIT NO. 3640: Cheque dated February
17, 1961, drawn on the
18 Royal Bank of Canada,
19 payable to Commodore
20 Portable Typewriter
21 Limited, in the amount
22 of \$24,992.50, drawn by
23 Netherlands Overseas
24 Corporation.

25 Typewriter

26 A. Do you want the stamp or a
27 sample?

28 MR. SHEPHERD: Q. I think just a sample.

29 Now, do you now produce a slip of
30 paper you wish to put into evidence, on which
is stamped the words "Commodore Portable
Typewriter Company Limited"? Do you assert
that is the stamp that was used that time by
that company, and that it is different from the

THE ROYAL COMMISSION
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1 M. Kapp 11940

2 stamp which is on the cheque?

3 A. Yes, sir, the stamp used
4 at Commodore Portable Typewriter and
5 Commodore Portable was a two-line stamp, where
6 as the stamp used at Commodore Sales on behalf
7 of Commodore Portable was a one-line stamp.

8 MR. SHEPHERD: Mr. Commissioner, Mr.
9 Kapp seeks to have entered into evidence a
10 stamp of that company, which is quite evidently
11 not the same in its appearance as is the stamp
12 on this cheque, Exhibit 3640.

13 THE COMMISSIONER: That will be 3641.

14
15 ---EXHIBIT NO. 3641: Impression of stamp of
16 Commodore Portable
Typewriter Company
Limited.

17
18 MR. SHEPHERD: Q. Who prepared journal
19 entries in the books of Commodore Portable
20 Typewriters relating to this transaction?

21 MR. POMERANT: Excuse me, Mr. Commissioner.
22 Mr. Kapp has the original stamp here itself,
23 and he wonders if you want that entered as well?

24 THE COMMISSIONER: No, I don't think so.
25 We have had a variety of things entered into
26 evidence, but I think the impression that is
27 produced can be taken as sufficient.

28 MR. SHEPHERD: Q. Who prepared the
29 journal entries recorded in the books of

THE ROYAL COMMISSION
ON
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M. Kapp

11941

2

Commodore Portable Typewriter, Mr. Kapp?

3

A. The entries at that time were made by Mrs. Porkoph - P-o-r-k-o-p-h, who was the bookkeeper for Commodore Portable Typewriter.

7

Q. But from whom did she get the instructions concerning the appropriate journal entry to make on this very transaction, from Mr. Wagman?

11

A. No, the instructions to
Mrs. Porkoph was taken from me.

13

Q. And from whom did

14

understanding which led

15

since it seems plain from the journal entry,
it wasn't your journal entry you received a
cheque from Netherlands Overseas, you think
you had received directly a credit from
Commodore Sales Acceptance?

20

A. I was given the understanding by Mr. Wagman that they had received the money, and as I said to you just now, and verified in the books of Commodore Sales, they did receive the money and credited Commodore Portable Typewriter. Mr. Wagman told me, and I have accepted it and made the entries accordingly.

27

By that time I knew Mr. Wagman quite well, having worked with him in the borrowing of money.

30

THE ROYAL COMMISSION
ON
ATLANTIC ACCEPTANCE CORPORATION LIMITED

1 M. Kapp 11942

2 Q. I think you have said,
3 relating now to the shares, that you were
4 aware that Mr. Morgan was the purchaser of
5 the shares, but you were not aware that
6 Netherland Overseas had anything to do with
7 the share transfer; is that correct?

8 A. That is correct, this is the way
9 it was given to me. And as I have said, I
10 have reflected the entries accordingly that
11 Netherlands Overseas bought the notes and
12 Mr. Morgan bought the shares.

13 Q. Did it trouble you at all that
14 Mr. Morgan was buying the shares from Mrs.
15 Tramiel and Mrs. Kapp, but the method of
16 payment was a reduction in the loan owing to
17 Commodore Sales Acceptance by Commodore
18 Portable Typewriters?

19 A. No, it didn't bother me, sir.
20 My understanding was this was going to Atlantic,
21 and I think it would only be natural for them
22 if they had money going to Commodore Portable
23 Typewriter to use that money for reduction of
24 the debt, which is something we would want to
25 do ourselves.

26 Q. But I suggest Commodore Portable
27 Typewriters did not own the shares. Would you
28 not agree the more usual way for this
29 transaction to occur would be for Mr. Morgan to

THE ROYAL COMMISSION
ON
ATLANTIC ACCEPTANCE CORPORATION LIMITED

1 M. Kapp 11943

2 give Mrs. Tramiel and Mrs. Kapp a cheque for
3 the purchase price of the shares?

4 A. Well, again, no, Mr. Shepherd,
5 because we would still want the major
6 controlling shares of Commodore Portable
7 Typewriter. We had guaranteed the accounts,
8 guaranteed the loans from Commodore Sales
9 Acceptance. So, therefore, again, it would be --
10 it would not be unusual at all in that case
11 for Mr. Morgan to pay the Commodore Sales
12 rather than to us.

13 Q. Did Mr. Morgan know that Mrs.
14 Tramiel and Mrs. Kapp were the owners of the
15 shares?
16 A. Must have been known, because
17 these instructions we have given that the
18 shares go in these names.

19 Q. So, obviously you had to make
20 some journal entries to reflect what you
21 then understood the position to be, that
22 Mrs. Tramiel and Mrs. Kapp had paid a debt of
23 Commodore Portable Typewriters to Commodore
24 Sales Acceptance, and were, therefore, entitled
25 to receive credit for that payment from
26 Commodore Portable Typewriters; is that
27 correct?

28 A. Yes, and they did receive credit
29 by Commodore Portable Typewriters.

THE ROYAL COMMISSION
ON
ATLANTIC ACCEPTANCE CORPORATION LIMITED

1 M. Kapp 11944

2 Q. And they then settled that
3 debt owing to them by Commodore Portable
4 Typewriters by the issuance of preference
5 shares; is that not correct?

6 A. That is correct.

7 Q. Was this done on your own
8 motion or was this a method of treating the
9 matter suggested to you by Mr. Wagman or
10 Mr. Morgan?

11 A. No, it had been suggested by
12 Mr. Morgan in order to eliminate the debt in
13 the form of repayment we should issue
14 preference shares for the \$25,000.

15 Q. Were you aware from any source
16 that other holders of Commodore Sales
17 Acceptance shares received offers to exchange
18 them for shares of Atlantic Acceptance
19 Corporation on the basis which would result
20 in the payment of \$7.50 per share?

21 A. No. I have no knowledge of what
22 was going on at Commodore Sales Acceptance
23 with the exception of my relationship with
24 Mr. Wagman in connection with the factoring
25 business when Commodore Portable was borrowing.
26 I don't know what was going on in there.

27 Q. Had it been your understanding you
28 would receive \$6.00 per share for the shares you
29 were selling?

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A. I believe there was some sort
of figure mentioned at the time.

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Q. Now, I put it to you -- you
are very welcome to look at the documents if
you wish -- that the history of this share
block was this: Mrs. Tramiel and Mrs. Kapp
acquired a 25 per cent interest, being
1,000 shares. Thereafter other shareholders
subscribed for shares in Commodore Sales
Acceptance. And you were given by Commodore
Sales Acceptance 250 shares in settlement of
services which you performed for Commodore
Sales Acceptance. You then subscribed, as
every shareholder was entitled to do, to
three shares for every one you held at a price
of 10 cents per share, so that you had 1,000
common shares. Mrs. Tramiel and Mrs. Kapp,
having originally subscribed for 1,000 shares
subscribed for a further 3,000 at 10 cents
per share, pursuant to the same arrangement,
so that Mrs. Tramiel and Mrs. Kapp had
4,000 shares, and you had 1,000 shares.

24

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Did you understand you were selling
to Mr. Morgan the 4,000 shares which Mrs.
Tramiel and Mrs. Kapp owned, or did you understand
you were selling a block of 5,000 shares, which
would include the thousand you had acquired?

A. I didn't know exactly how many

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shares we had. My understanding was that
the \$25,000 was for all the shares that
we jointly owned, that is Mrs. Tramiel, Mrs.
Kapp, Mr. Tramiel and myself.

6 Q. What discussion took place as
7 a result of which there was issued to you
8 250 Commodore Sales Acceptance shares, and you
9 then subscribed for three times that many
10 10 cents?

11 A. Well, of course, frankly I don't
12 remember anything about it. The only thing
13 I know is what I heard you describe today,
14 and before about the thousand shares.

Q. When did you first learn that
you owned a thousand shares, albeit the
certificates stood in the names of Annett?

A. Somehow my whole recollection
of the transaction is very vague, with the
exception I do recollect that we had shares,
and subsequently they were sold for \$25,000.
This is the part I do remember. And what the
amount of the shares were exactly. I don't know.

Q. What I would like to get at,
Mr. Kapp, is whether you even knew at all that
the company, Commodore Sales Acceptance,
authorized to be issued to you 250 shares in
recognition of services you had performed for
that company?

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2 A. If I ever knew it I certainly
3 don't remember it now.

4 ~~Commodore~~ Q. I show you from Exhibit 60,
5 being the minute book of Commodore Sales
6 Acceptance, minutes of the 23rd of December,
7 1959, stating that 250 shares are allotted
8 to you for public relations service. And I
9 direct your attention in the same exhibit, a
10 subscription for a further 750 shares at 10
11 cents each on the same date, signed by yourself.
12 Does this bring back to your memory the
13 allotment of these shares for public relations
14 services and the subscription for a further
15 750 at 10 cents each?

16 ~~Some~~ A. ~~all~~ Somehow it doesn't bring any
17 recollection. I have given this matter some
18 thought since you brought it up before, and
19 somehow this detail just didn't stay in my mind,
20 with the exception of the \$25,000 made in that
21 transaction. ~~just~~

22 Q. ~~Sale~~ What I am wondering about, Mr.
23 Kapp, do you consider that you ever did know
24 that you had a thousand shares in that company,
25 250 for public relations services and 750
26 for a 10 cents subscription?

27 A. ~~My~~ My understanding was originally
28 we had 25 per cent ---

29 Q. Yes?

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2 by us. A. -- of the shares issued to us.

3 I know afterwards some more money went into
4 Commodore Sales Acceptance, which we had
5 nothing to do, and the share ownership
6 somehow changed. But the exact amount of
7 shares I never paid much attention to
8 afterwards. I did not participate.

9 Q. Perhaps we can get at this way,
10 at the time of the sale to Mr. Morgan did
11 you consider Mrs. Tramiel and Mrs. Kapp owned
12 all the shares which your respective families
13 had, or did you realize you had some as well?

14 A. I didn't realize. My understanding
15 was those were the only two shareholders, and
16 those were all the shares that we owned.

17 Q. Can you assist us as to why you
18 would sign that subscription for additional
19 shares and not be able to recall it to mind
20 that the transaction occurred? I can understand
21 you might not just know in the minutes of
22 Commodore Sales they were allotting shares
23 allegedly to you?

24 A. When we go back to 1959, Mr.
25 Shepherd, I didn't have the understanding of
26 minute books that I may have today, and I
27 didn't particularly go into it as to what these
28 shares were. I took it for granted all the
29 time this was part of the original shares owned

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2 by us. we had forms. and
3 had to Q. Did you in fact, so far as
4 you were aware, perform any public relations
5 services for Commodore Sales Acceptance
6 prior to that date in 1959 which would call
7 for compensation in this manner?

8 origine A. I did not perform any public
9 relations service. The only service I know
10 I have performed for Commodore Sales is in
11 the earlier day to help Mr. Wagman set up
12 certain forms, trust receipt, and the type
13 used --the assigning form used by Commodore
14 Sales were made up by myself. And this was
15 based on what I had learned in dealing
16 with Interprovincial.

17 Q. Yes?

18 instro A. And this is the only service I
19 know I may have performed for Commodore Sales.

20 shew Q. Would it be fair to say, at
21 least in your own mind, you would be performing
22 that particular work as much for the benefit
23 of Commodore Portable Typewriters, that was
24 borrowing on this form, as for Commodore Sales?

25 A. In my mind when Commodore Sales
26 started there was nothing, so subsequently
27 if we had to assign receivables, make receipts
28 to Commodore Sales, and make assignment of
29 inventories, it wasn't possible to make it

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unless we had forms. And, therefore, we had to make them up, and I helped Mr. Wagman. That basically was for my benefit.

Q. Did you then consider that
in return for \$25,000, Mr. Morgan was buying
whatever shares had arisen out of the
original subscription for stock made when
Commodore Sales Acceptance was first organized
and Commodore Portable Typewriters loaned money
to that company?

A. That is right.

Q. Did you give any instructions to Annett's to deliver a certificate for a thousand shares to which you were entitled to Netherlands Overseas or, indeed, to anybody?

A. I don't recall giving any instructions to anybody, not only for a thousand shares, but for that matter for any shares.

Q. And I suppose you are able to say whether Mrs. Tramiel and Mrs. Kapp gave any instructions to Annett's to the effect their shares should be delivered to some other person?

A. I don't think so they did.

THE COMMISSIONER: We will now rise until ten a.m. on Thursday.

I have had some discussion with

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Mr. Pomerant, Mr. Kapp, about the time that would be convenient to him, and we propose to resume this examination on Thursday after hearing two witnesses first who have been -- at least, one witness first whose appearance has been settled for at that time.

So, I think it is all clearly understood by Mr. Pomerant.

---Whereupon the Hearing adjourned at 5:03 p.m. to commence at 10:00 o'clock in the forenoon on Thursday, December 8, 1966.

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1 Certified correct as to pages 11791-11804,
2 11841-11864, and 11905-11920.

CD Scott

.....
Chartered Shorthand Reporter

6
7 Certified correct as to pages 11805-11820-A,
8 11865-11878, and 11925-11951.
9

H. Colclough

.....
Chartered Shorthand Reporter

14 Certified correct as to pages 11821-11850-A
15 and 11879- 11904-C.
16

Terence M. Horan
.....
Chartered Shorthand Reporter



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